

**Annaya Kocha Shetty (Dead) through LRs  
v.  
Laxmibai Narayan Satose since Deceased  
through LRs & Others**

(Civil Appeal No. 84 of 2019)

08 April 2025

**[Pankaj Mithal and S.V.N. Bhatti,\* JJ.]**

**Issue for Consideration**

Issue arose as regards the correctness of the order passed by the High Court in revision application confirming the judgment of the appellate bench whereby decree of the trial court was reversed; and whether the ‘agreement of conducting’ between parties was in nature of licensor and licensee of the suit premises or merely for conducting the hotel business of the first defendant by the plaintiff.

**Headnotes**

**Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 – ss.15A, 28 – Evidence Act, 1972 – ss.91, 92 – Plaintiff and the first defendant-owner of the property, entered into an agreement styled for conducting hotel business on the said property – Subsequently, first defendant served notice to the plaintiff to vacate and hand over the business – Plaintiff filed suit for declaration that plaintiff is the deemed tenant, and a restraint order against the defendants from interfering with or dispossessing the plaintiff from the plaint schedule which was allowed – Appellate court set aside the decree passed by the trial court, and the High Court upheld the same – Correctness:**

**Held:** Agreement is one for conducting the business of the first defendant – Oral evidence is excluded from consideration as none of the exceptions is attracted – Plaintiff adduced oral and documentary evidence either to dilute the obligation/standing of the plaintiff in the agreement, or to claim the status of a deemed tenants – On facts, the photocopy of the registration certificate would not change the status of the plaintiff from the conductor of the business to a sub-tenant and, by operation of law, a deemed

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\* Author

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tenant – Receipts evidencing payment of royalty would militate against the status of deemed tenancy claimed by the plaintiff – Unless and until the case falls under one or the other exceptions enabling receipt of oral evidence on a written document, the court is precluded from entertaining oral evidence – Document or deed interpreted in a particular case is not relied upon, but the subject deed is construed on well-established principles – Law recognises both ownership and possession of an owner of a property – Lease recognises the outcome of a rightful separation of ownership and possession between lessor and lessee – Admittedly, defendant no. 1 is in possession of the property from defendant no. 2 – Agreement of conducting business does not deal with the possession so enjoyed by defendant no. 1 in favour of the plaintiff – Absence of such a crucial clause in the agreement is a vital circumstance in construing the subject matter of the said agreement – Thus, what has been entrusted is to run the business in the plaint schedule but not occupying the plaint schedule under leave and licence – Terms of the agreement are clear that the entrustment to the plaintiff is the ownership of the hotel business of the first defendant and not the tenancy right of the first defendant in favour of the plaintiff – View taken by the first appellate court and the impugned order of the High Court, upheld. [Paras 18.1, 18.2, 22, 23, 24]

**Deeds and documents – Rules of construction – Construction of the Contract:**

**Held:** Contract is first constructed in its plain, ordinary and literal meaning, which is known as the literal rule of construction – If there is an absurdity created by literally reading the contract, a shift from literal rule may be allowed which is called the golden rule of construction – Contract may be purposively constructed in light of its object and context to determine the purpose of the contract – This approach must be used cautiously – Furthermore, the construction of a deed is generally speaking, a matter of law – However, when there is an ambiguity in the deed, determining its meaning is a mixed question of fact and law – This concept is encapsulated by ss.91 and 92 of the 1872 Act – Evidence Act, 1872 – ss.91 and 92. [Paras 17.1-17.3, 18]

**Code of Civil Procedure, 1908 – Ord.6 r.16 – Pleadings – Lengthy pleadings and judgments – AI/computer-generated statements – Meandering pleadings lead to discursive judgments – Need for brief and precise pleadings – Elucidated.** [Para 3]

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### Case Law Cited

*Shakuntala Shukla v. State of Uttar Pradesh [2021] 6 SCR 87 : (2021) 20 SCC 818; Provash Chandra Dalui and Another v. Biswanath Banerjee and Another [1989] 2 SCR 401 : (1989) Supp. 1 SCC 487; Chandavarka Sita Ratna Rao v. Ashalata S. Guaram [1986] 3 SCR 866 : (1986) 4 SCC 447; Varisalli Mohd. Iliaas v. Abdul Sattar Gulam Hussain (1991) Mah LJ 1523; Mangala Vaman Karandikar vs. Prakash Damodar Ranadeon [2021] 5 SCR 232 : (2021) 6 SCC 139; TN Electricity Board v. N. Raju Reddiar [1996] Supp. 1 SCR 739 : AIR (1996) SC 2025; Tyagaraja Mudaliyar and Another v. Vedathanni (1936) AIR PC 70 – referred to.*

### Books and Periodicals Cited

*Scalia & B. Garner, Making Your Case: The Art of Persuading Judges, pp. 81 (2008) Ch-35; Halsbury, 4th Edn. Vol. 12, 1461 – referred to.*

### List of Acts

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947; Code of Civil Procedure, 1908; Evidence Act, 1872; Bombay Sales Tax Act, 1959; Transfer of Property Act, 1882.

### List of Keywords

Agreement for conducting hotel business; Leave and license; Bar on adducing oral evidence; Registration certificate; Deemed tenancy; Royalty receipts; Rules of construction; Literal rule of construction; Golden rule of construction; Unnecessary and frivolous pleadings; Meandering pleadings; AI generated pleadings; Computer generated pleadings; Oral evidence; Registration certificate; Ownership and possession; Construction of the Contract; Literal rule of construction; Construction of a deed; Ambiguity in the deed; Lengthy pleadings and judgments; Need for brief and precise pleadings.

### Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 84 of 2019

From the Judgment and Order dated 16.07.2018 of the High Court of Judicature at Bombay in CRA No. 247 of 2016

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**Appearances for Parties**

*Advs. for the Appellants:*

B.H. Marlapalle, Sr. Adv., Kunal Cheema, Raghav Deshpande.

*Advs. for the Respondents:*

Vinay Navare, Sr. Adv., Chinmoy Khaladkar, Abhinay, Ms. Parul Khurana, Rohan Batra, Rishabh Bhargava, Aman Vachher, Yadunath Chaudhary, Dhiraj, M/S. Vachher And Agrud, M/S. P.B.A. Legal.

**Judgment / Order of the Supreme Court**

**Judgment**

**S.V.N. Bhatti, J.**

1. The Civil Appeal arises from the Order dated 16.07.2018 in Civil Revision Application No. 247 of 2016 in the High Court of Judicature at Bombay (“Impugned Order”), confirming the Judgment dated 17.08.2015 in appeal No. 547 of 2004 of the appellate bench . The Judgment dated 17.08.2015 reversed the judgment and decree dated 20/22.03.2004 in R.A.D. Suit No. 1860 of 1997 before the Small Causes Court at Mumbai. The LRs of the plaintiff are appellant nos. 1.1 to 1.4 in the Civil Appeal.
2. The plaintiff filed the suit for declaration that the plaintiff is the deemed tenant/protected licensee of the first defendant in terms of section 15A of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, as enforced from 01.02.1973 (“Bombay Rent Act”), for shop nos. 5 and 6, Shri Samarthashraya Vishranti Graha, Nanabhai Court, Dr. Babasaheb Ambedkar Marg, Hindmata Junction, Dadar, Bombay-400014 (for short, ‘the Plaintiff Schedule’). The plaintiff also prayed for a restraint order against the defendants from interfering with or dispossessing the plaintiff from the Plaintiff Schedule. The suit was filed against Laxmibai Narayan Satose/defendant no.1, and M.S. Nanabhoy/defendant no.2. The plaintiff pleads that the first defendant is the landlady, and through her, the plaintiff claims a right of declaration as noted above. Admittedly, the second defendant is the owner of the Plaintiff Schedule. The Plaintiff Schedule was under a lease with the husband of the first defendant, and after the original tenant’s demise, the first defendant continued as lessee of the Plaintiff

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Schedule. The first defendant was running a hotel under the name and style of "Shri Samarthashraya Vishranti Graha" ("the Hotel"). The first defendant, after the demise of her husband, ran the business for some time. But she was unable to run it successfully, so she allowed her brother 'Namdev Morye', to continue running the Hotel. The said arrangement did not prove to be advantageous to the first defendant. With this background, the plaintiff claims to have stepped in the Plaintiff Schedule and that, on 16.08.1967, an agreement styled for conducting hotel business was entered into between the plaintiff and the first defendant. The said arrangement was continued under subsequent agreements between the plaintiff and the first defendant. On 28.02.1997, the first defendant served notice to the plaintiff to vacate and hand over the business being run in the Plaintiff Schedule. With the above development, the plaintiff filed the suit for the reliefs noted above.

3. The averments in the plaint are elaborate; commensurate to the detailed plaint, the written statement is equally elaborate. To wit, the plaint runs into eight pages, and the written statement is sixteen pages long. The resultant consequence is that, in the trial, much oral evidence is brought on record, resulting in a lengthy judgment by the trial court. The judgment of the appellate bench is equally lengthy, even though the core issue for consideration could have been captured in a nutshell by the appellate bench. A judgment should be coherent, systematic, and logically organised. It should enable the reader to trace the facts to a logical conclusion on the basis of legal principles.<sup>1</sup> Lately, this Court has been experiencing meandering pleadings irrespective of the nature of the dispute. We are reminded of Abraham Lincoln's ode to a lawyer friend – "[h]e can compress the most words into the smallest ideas of any man I ever met." Such lengthy pleadings would even upset Polonius from Shakespeare's Hamlet. Every word that is not a help is a hindrance because it distracts. A reader who realizes that a brief is wordy will skim it; one who finds a brief terse and concise will read every word.<sup>2</sup> The parties to a suit ought not to compel the court to exercise its jurisdiction under Order 6 Rule 16 of the Code of Civil Procedure, 1908 and strike out unnecessary or frivolous pleadings. The effort

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<sup>1</sup> *Shakuntala Shukla v. State of Uttar Pradesh* (2021) 20 SCC 818

<sup>2</sup> *Scalia & B. Garner, Making Your Case: The Art of Persuading Judges*, pp. 81 (2008) Ch-35.

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of pleading and evidence should be to be concise to the cause and must not confuse the cause. The lengthy pleadings and avoidable evidence are well within the scrutiny of trial courts, and, at the right stage, must be regulated within four corners of the law. Such an approach by trial courts would like a stitch in time, save nine. Long and drawn-out pleadings will run the risk of having a cascading effect on the appellate and revisional courts. Meandering pleadings will land up with laden weight in SLPs, making the narrative difficult. The time has come for courts to invoke the jurisdiction under Order 6 Rule 16 and make litigation workable. Courts are also confronted with AI-generated or computer-generated statements. While technology is useful in enhancing efficiency and efficacy, the placid pleadings will disorient the cause in a case. It is time that the approach to pleadings is re-invented and re-introduced to be brief and precise. Having remarked on the need for brevity, we have a task on hand to deliver a brief judgment.

4. The solace to this Court in deciding the Civil Appeal is that all the learned Counsel appearing for the parties have presented the core of controversy alone for adjudication in the Civil Appeal. The prelude to the plaintiff's narrative is needed in as much as meandering pleadings lead to discursive judgments.
5. The plaintiff was in the business of conducting hotels in Mumbai. On mutually agreed terms and conditions, the first defendant granted a leave and license of the suit premises to augment her income. In unequivocal terms, the plaint refers to the prohibition of law prevailing then, and that the deed was devised to circumvent such prohibition. Therefore, it is alleged that the agreement dated 16.08.1967 is captioned as an 'agreement of conducting', and the parties are referred to as owner and conductor. The agreement dated 16.08.1967 is one in the nature of the licensor and licensee of the premises of the Plaintiff Schedule, but not a mere agreement for conducting the hotel business of the first defendant by the plaintiff. The arrangement initially lasted for eleven months and has been extended from time to time. The Plaintiff Schedule falls within section 28 of the Bombay Rent Act. Section 15A has been inserted into the Bombay Rent Act vide amendment of 1963, which was later enforced from 01.02.1973, whereunder deemed tenancy and consequent protection to the tenant has been granted by the legislature. The plaintiff, by the existing arrangement of leave and license with the first defendant, is a deemed tenant and hence prayed for the reliefs referred to above. The first defendant contested the suit

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and denied the existence of a landlord-tenant relationship between the plaintiff and the defendant. The agreement dated 16.08.1967, in letter and spirit, was entered into between the first defendant and the plaintiff for the conduct of hotel business being carried on by the first defendant. The agreement dated 16.08.1967 is a contemporaneous document evidencing the agreement between the parties, and the clauses have been appropriately incorporated and adhered to by the parties till the present suit was filed. By serving the notice to hand over the business, the first defendant terminated the arrangement. Section 15A of the Bombay Rent Act is not attracted to the subject arrangement, and the plaintiff cannot claim the status of a deemed tenant of the Plaintiff Schedule.

6. The trial court answered the substantial issues in favour of the plaintiff and against the first defendant. The gist of the reasoning and findings is that the plaintiff is a licensee and not a mere conductor of the business of the first defendant. The trial court held that it depends on the nature and quality of the plaintiff's occupation of the suit premises and not on the mere nomenclature of the agreement dated 16.08.1967. The trial court, while referring to various clauses of the agreement dated 16.08.1967, held that:
  - 6.1 Clause I of this agreement denotes that the owner has granted the plaintiff leave and licence to use and occupy the hotel premises.
  - 6.2 Clause III of the agreement indicates that in consideration of the leave and licence, the conductor shall pay the owner for the first 5 periods each of 11 months royalty at the rate of Rs. 1000/- per month before the 5<sup>th</sup> of subsequent months.
  - 6.3 Clauses I and III of the agreement clearly show that in consideration of Rs. 1000/- per month, defendant no. 1 granted leave and licence in favour of the plaintiff to use and occupy the hotel premises.
  - 6.4 Clause IV of the said agreement fastens liability upon the plaintiff to bear and pay regularly all the electric bills, water charges, workman wage, license fee, etc. The trial court held that if it were defendant no. 1, who was running the business, she would have been expected to bear all these charges.
  - 6.5 Clause VI of the agreement shifts the risk to bear all the costs regarding the business on the plaintiff.

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- 6.6 Clause VII imposes restrictions on the plaintiff to use the suit premises for carrying on hotel business only and not to change the nature of the business. Hence, no running business was given to him.
- 6.7 Clause XIV of this agreement makes the plaintiff fully responsible for paying the workers their wages and exempts defendant no. 1 regarding the same. None of the servants initially employed by the deceased defendant no. 1 were there after the execution of the said agreement.
- 6.8 The trial court was of the view that all the various clauses of the agreement indicate that the deceased defendant no. 1 did not retain any dominant control in the hotel business being run by the plaintiff in the suit premises. Hence, if the plaintiff carried on the business, defendant no. 1 ought not to have discontinued paying sales tax. Merely mentioning the word "royalty" in receipts is not sufficient to conclude that there was an agreement of conducting the Hotel between the parties. Considering the nature of exclusive use, occupation, and possession of the plaintiff with respect to the suit premises from 1967 to date, the nomenclature of the agreement has no wider significance in determining the relationship.
- 6.9 Relying on oral evidence, the trial court notes that the law in force at the time did not allow for a tenant-landlord arrangement in the factual matrix at hand. Consequently, the agreement dated 16.08.1967 was styled as an agreement of conducting, but the contents pointed towards an agreement of leave and license. This is also buttressed, the trial court held, by the fact that the plaintiff was paying rent of Rs. 1000/- per month. The trial court held that the evidence of the witnesses deserves to be relied upon, especially because during cross-examination, the said oral and documentary evidence was not seriously challenged. Thus, it was held that the plaintiff is a deemed tenant under section 15A of the Act.
7. The appellate bench examined and interpreted the agreement dated 16.08.1967 in its entirety and reversed the judgement and decree of the trial court. The appellate bench examined the scope and object of sections 91 and 92 of the Evidence Act, 1872 and the bar on parties to an agreement to adduce oral evidence contrary to the

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clauses in a written agreement. The appellate bench held that the contemporaneous agreement through which the plaintiff secured permission to enter into the Plaintiff Schedule is a plain agreement to conduct the business of the first defendant and not a leave and license of premises in favour of the plaintiff. The appellate bench found that the trial court failed to interpret relevant clauses in the agreement that pointed to the arrangement as one of leave and license. The appellate bench appreciated the consideration received by the first defendant between March 1967 and September 1973, i.e., 99 receipts evidencing receipt and payment of royalty for conducting the business. The appellate bench heavily relied on these royalty receipts as evidence supporting the existence of conducting agreements for running the hotel business rather than a simple leave and license arrangement. Further, it pointed out that the trial court should have carefully considered the tenor of these receipts. The consistent payment of royalties every month indicated that the arrangement was merely to conduct a business and not to be a licensee of the Plaintiff Schedule. Electricity bills, sales tax registration, BMC permission, etc., were part of the evidence considered by the appellate bench in assessing the nature of the plaintiff's occupation and business operations. By relying on the applicable clauses in the agreement dated 16.08.1967 and the contemporaneous situation, the agreement was styled as an agreement for conducting business. The appeal of defendant no.1 was hence allowed.

8. Aggrieved by the reversal of the trial court order by the appellate bench, the plaintiff filed Civil Revision Application No. 247 of 2016. The High Court, through the Impugned Order, confirmed the view of the appellate bench. It was held by the High Court that sections 91 and 115 of the Evidence Act, 1872 point to the finding that the Plaintiff Schedule was given for running the Hotel on a conducting basis and not on a leave and license basis.
9. The High Court held that the intention of defendant no. 1 and her LRs was to give the hotel business on a conducting basis to the plaintiff and that there was no intention to execute a leave and license agreement regarding the said premises. The Impugned Order looked into the agreement dated 16.08.1967 in detail and stated that –
  - The “recital” notes the conducting basis nature of the agreement.
  - Clause III refers to the payment of royalty at Rs. 1000 pm.

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- Clause IV requires the plaintiff to incur and pay electricity charges.
  - Clause V requires the rent of the premises to be borne by defendant no. 1 to the landlord defendant no. 2.
  - Clause VII and X point towards conducting of the hotel business.
  - Utensils and furniture were annexed.
10. The High Court held that all the subsequent agreements formed a part of the conducting agreements. Moreover, the plaintiff cannot deny the execution of the conducting agreement on the premise that he was not well-conversant with the English language. Thus, the High Court held that the appellate bench was correct in noting that the agreement was for the conduct of business.
11. Shri B.H. Marlapalle, learned Senior Counsel, placed reliance on the reasoning adopted by the trial court and contrasted the interpretation adopted by the appellate bench and High Court, on a plain reading of agreement dated 16.08.1967, as erroneous. It is argued that the nomenclature of a deed is not the determinative circumstance of the status, rights, duties, or obligations undertaken by the parties to a deed. From the evidence on record, with considerable force, it is argued that the entrustment of the Plaintiff Schedule to the plaintiff is not that of an ongoing business, but that of a lessee-licensee. The agreement must be understood in its letter and spirit, as well as the right with which the plaintiff is enjoying the Plaintiff Schedule. The learned Senior Counsel places reliance on *Provash Chandra Dalui and another v. Biswanath Banerjee and another*<sup>3</sup> for the proposition that the best interpretation of the contract is to be made from the context, and it is to be construed with reference to its object and the whole of its terms. Further, he relies on *Chandavarka Sita Ratna Rao v. Ashalata S. Guaram*<sup>4</sup> to interpret Section 15A of the Bombay Rent Act to contend that a valid pre-1973 license converts the plaintiff into a tenant entitled for protection under the Bombay Rent Act.
12. The learned Senior Counsel fairly argues that the standing of the plaintiff is dependent on the interpretation of the agreement dated 16.08.1967 and also the subsequent documents evidencing the

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3 (1989) Supp. 1 SCC 487

4 (1986) 4 SCC 447

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nature of enjoyment of the plaintiff. He relies on the test in *Varisalli Mohd. Ilias v. Abdul Sattar Gulam Hussain*<sup>5</sup> for determining whether under an agreement, leave and license are created or authorised to conduct business to interpret the subject agreement, and the decision in all fours is applicable to the facts of the case.

13. Mr. Chinmoy Khaladkar, learned Counsel appearing for defendant no. 1, argues that the plaintiff, both in law and fact, is estopped from resiling from the clauses under the agreement dated 16.08.1967. It is axiomatic and not disputed by defendant no. 1 that a deed is not constructed by the nomenclature of the document but by the text and the tenor of all the clauses governing the relationship between the parties. By relying on *Provash Chandra Dalui (supra)*, he commends this Court to interpret the suit agreement. Sections 91 and 92 of the Evidence Act, 1872 are attracted to the case on hand and do not fall within any of the exceptions for adducing oral evidence, either contrary to the agreed clauses or to explain the clauses agreed to between the parties. He has invited our attention to the agreement in its entirety, particularly the preface determining the standing of the plaintiff as conductor and the first defendant as owner of the business. The agreement deals with conveying authority to the plaintiff. Defendant no. 1, under the agreement, declares to have been carrying on the business of hotel and tea catering and desired to give the right to conduct the business in favour of the plaintiff. Clause 1 further reinforces the relationship. Clauses 7, 8, 10, 12, 14, 15, and 16 abundantly make it plain and clear that considering the contemporaneous circumstances in 1967, the plaintiff could deal with the business being run by the first defendant, and not the occupancy right of the Plaintiff Schedule. The certificate of registration under the Bombay Sales Tax Act, 1959, is rightly excluded by the appellate and revisional courts. Further, the photocopy of the certificate cannot be relied upon in evidence for any purpose. To appreciate the crux of the agreement dated 16.08.1967, the schedule of items entrusted to the plaintiff for running the business would be important.

13.1 Mr. Chinmoy Khaladkar also relies on *Mangala Vaman Karandikar vs. Prakash Damodar Ranadeon*<sup>6</sup> to delineate the scope and ambit

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5 (1991) Mah LJ 1523

6 (2021) 6 SCC 139

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of sections 91 and 92 of the Evidence Act, 1872. According to him, the Three-Judge Bench judgement in *Mangala Vaman Karandikar* (*supra*) squarely governs the situation, and oral evidence ought not to be examined to interpret the agreement dated 16.08.1967 and the subsequent agreements.

14. Shri Vinay Navare, learned Senior Counsel, appears for respondent no. 3, a subsequent purchaser from defendant no. 2, and supports the plaintiff. The arguments of Shri Vinay Navare are not adverted to as the second defendant did not participate before the trial court or the appellate bench. In the subject Civil Appeal, we are not enquiring into or adverting to the stance of respondent no. 3 *vis-à-vis* the other parties to the litigation. The available contentions of respondent no. 3 are left open for consideration in an appropriate proceeding.
15. We have taken note of the arguments addressed by the learned Counsel appearing for the parties.
16. The circumstances dealing with the dispute between the parties are stated in required detail in the preceding paragraphs. At the outset, let us refer to the ratio of this Court in *Provash Chandra Dalui* (*supra*) on the construction of the basic agreement between the plaintiff and the defendant. This Court held that the court must look at the words used in the contract unless they are such that one may suspect that they do not convey the intention correctly. If the words are clear, there is very little the court can do about it. In constructing a deed, looking at the surrounding circumstances and subject matter is legitimate only if the words used are doubtful.
17. The guide to the construction of deeds and tools adopted can broadly be summarised as follows:
  - 17.1 The contract is first constructed in its plain, ordinary and literal meaning. This is also known as the literal rule of construction.
  - 17.2 If there is an absurdity created by literally reading the contract, a shift from literal rule may be allowed. This construction is generally called the golden rule of construction.
  - 17.3 Lastly, the contract may be purposively constructed in light of its object and context to determine the purpose of the contract. This approach must be used cautiously.
18. The construction of a deed is “generally speaking, a matter of law.”

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However, when there is an ambiguity in the deed, determining its meaning is a mixed question of fact and law.<sup>7</sup> This concept is encapsulated by sections 91 and 92 of the Evidence Act, 1872.

18.1 Section 91 of the Evidence Act, 1872 denotes that a deed constitutes the primary evidence of the terms to which the parties are to adhere. Whereas section 92 of the Evidence Act, 1872 forbids any contradictions or variations in a written document by extrinsic evidence.<sup>8</sup> However, there are exceptions outlined in the proviso to section 92, that allow variations from this general rule:

***"92. Exclusion of evidence of oral agreement. –***

*"When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms;*

*Proviso (1): Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party want or failure of consideration, or mistake in fact or law:*

*Proviso (2): The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document:*

7 Halsbury, 4th Edn. Vol. 12 ¶1461.

8 *TN Electricity Board v. N. Raju Reddiar*, AIR (1996) SC 2025 at 2027.

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*Proviso (3): The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved.*

*Proviso (4): The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.*

*Proviso (5): Any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved; Provided that the annexing of such incident would not be repugnant to, or inconsistent with the express terms of the contract:*

*Proviso (6): Any fact may be proved which shows in what manner the language of a document is related to existing facts.”*

*(Emphasis supplied)*

18.2 The subtle distinction in the point of law, as carved out by the provisos, is that the evidence to vary the terms of an agreement in writing is not admissible, but evidence to show that there is no agreement in the first place is admissible.<sup>9</sup> Thus, unless the grounds fall within the provisos read with the illustrations to section 92, there is a bar on adducing oral evidence.

19. Now, we excerpt and construe the relevant clauses of the agreement dated 16.08.1967:

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<sup>9</sup> Tyagaraja Mudaliyar and another v. Vedathanni (1936) AIR PC 70.

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*"THIS AGREEMENT made at Bombay this 16th day of August 1967 BETWEEN SMT. LAXMIBAI NARAYAN SATOSE, a Hindu adult inhabitant of Bombay, hereinafter referred to as the "Owner" of the One Part (which expression shall mean and include her heirs, administrators, legal representatives and assigns unless repugnant to the context herein contained) AMD SHRI ANNAYA SHETTY, also a Hindu inhabitant of Bombay hereinafter referred to as the "Conductor" of the Other Part (which expression shall mean and include his heir, administrators and legal representatives unless repugnant to the context herein contained.*

*WHEREAS THE Owner above named is the Owner and sole proprietor of a Hotel Business known as "Shri Samarthashraya Vishranti Graha" at 225, Nanabhai Court, Dr. Ambedkar Road, at Shop Nos. 5 and 6 on the ground floor bearing C.S. No. 11/26 Dadar, Naigaum.*

*AND WHEREAS the said Owner has been carrying on the business of Hotel and tea catering in the said premises.*

*AND WHEREAS the Owner is desirous of giving the said business on conducting basis and the Conductor has agreed to take upon certain terms and conditions.*

*AND WHEREAS it is considered desirable to reduce the terms and conditions into writing.*

**NOW THIS AGREEMENT WITNESSETH AS UNDER:**

1. *That the Owner does hereby give to the Conductor and the Conductor doth hereby take accordingly for conducting the said business concerned viz. the said Hotel business of the Owner carried on under the name and style of "Shri Samarthashraya Vishranti Graha" at the above said premises and for the purpose of carrying on the said business, the said Hotel premises and to use fittings and fixtures and furniture and other accessories (more particularly described in the Schedule annexed hereto under) for the period and upon the terms and conditions herein after contained.*

2. xxx xxx xxx

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3. *In consideration of the leave and license the Conductor shall pay to the owner for the first five periods each of eleven months Royalty at the rate of Rs. 1000/- (Rupees One Thousand only) every month on or before the 5<sup>th</sup> of the subsequent month. The Conductor agrees that for the sixth, seventh and eighth period of eleven months each, the Conductor agrees that for the sixth, seventh and eighth period of eleven months each, the Conductor shall pay to the Owner a higher amount of Royalty per month (i.e. Rs. 1100/- per month) (Rupees One Thousand One Hundred per month) at the time of the renewal of this.*
4.       xxx xxx xxx
5.       xxx xxx xxx
6.       xxx xxx xxx
7. *That the Conductor shall use the said premises for carrying on Hotel business only of the Owner as aforesaid and he shall not change the name and the nature of the business.*
8. *That the Conductor shall carry on and conduct the said business entrusted to him, himself and he shall not give the same to anybody else for conducting or otherwise.*
9. *That the Conductor shall observe and perform all the rules and regulations and bye laws imposed by the local and Government authorities for doing the business of the like nature and he shall keep the owner indemnified against any action or penalties that might be imposed for breach thereof.*
10. *It is further agreed by the Conductor that he shall use the furniture fixtures and the business accessories as set out in the Schedule herein under annexed with true and proper care and caution and on the termination of this agreement he shall hand over the possession of the along with the premises to the owner in the same condition.*
11.       xxx xxx xxx

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12. *That on termination of this agreement by efflux of time or on earlier determination thereof, the Conductor shall quit and cease to use and occupy said premises and/or carry on and conduct the said business of the Owner and the Conductor shall hand over complete charge of the business to the owner peacefully and without delay and demur.*
13.       xxx xxx xxx
14. *It is further agreed by the Conductor that he shall be fully responsible to the workers employed by him for paying their wages and the Owner is not responsible for the same AND on the date of the commencement of this agreement there was no worker in the said concern employed by the owner.*
15. *It is further agreed that if the Conductor does not desire to run and conduct the said hotel business, the Conductor shall serve on the owner a notice to that effect of one month and on the expiration of the said notice period of one month the Owner shall assume the charge and take possession of the said hotel immediately.*
16. *The Conductor hereby agrees to allow the owner to visit or inspect the Hotel premises at all reasonable times without any obstruction.”*

*(Emphasis supplied)*

20. The plaintiff, contrary to the clauses under which the plaintiff has taken over the Hotel run in the Plaintiff Schedule, pleads the relationship of tenant/subtenant as having been given under leave and license.
21. The construction of the excerpted clauses can be summed up thus:
  - a. The nomenclature is an agreement of conducting.
  - b. The parties to the agreement are referred to as owner and conductor.
  - c. The parties agree on the ownership of the hotel business known as ‘Shri Samarthashraya Vishranti Graha.’

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- d. The owner has been carrying on the hotel business in the Plaintiff Schedule.
  - e. The owner desires to give the business on a conducting basis, and the conductor has agreed to take the business upon the terms and conditions set out therein. Clause 1 specifically refers to the owner giving to the conductor, and the conductor agreeing to take for conducting the business. That is, the said hotel business of the owner carried on under the name and style of Shri Samarthashraya Vishranti Graha at the aforesaid premises. The owner thus granted to the conductor to use and occupy the said hotel premises – including fittings, fixtures, furniture, etc.
  - f. The consideration is stated as royalty for conducting the business.
  - g. The conductor is obligated to carry on the Hotel business only of the owner.
  - h. The conductor carries on and conducts the business entrusted to him and is barred from entrusting it to a third person for conducting the business otherwise.
  - i. The conductor is allowed to use the utensils and fixtures, and is obligated to return them upon the termination of the agreement.
  - j. The conductor is obligated to hand over the complete charge of the business to the owner if the relationship is terminated either by termination or efflux of time.
  - k. The conductor obligates himself to be fully responsible to the workers and the salaries payable to them.
  - l. The conductor severs the relationship of running the business by serving a month's notice to the owner.
  - m. The owner is allowed to visit or inspect the Hotel at all times without obstruction.
22. The plaintiff and the first defendant entered into the agreement dated 16.08.1967, and the contemporaneous document reproduces or reflects the subject matter of the agreement, terms and conditions agreed between the parties, rights, and limitations on the owner and the conductor. The plaintiff has taken over the business under the agreement dated 16.08.1967. With a few minor variations, the

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agreements referred to above have been entered into, and the plaintiff asserts a change of status only when a notice is served to hand over the business by the first defendant. The plain interpretation of the agreement dated 16.08.1967 discloses that the parties to the agreement, briefly stated, were contemplating dealing with a business and have entered into an agreement for conducting the business. The argument of the plaintiff, by looking at the nomenclature, is that the standing of the plaintiff as interpreted by the appellate bench and the High Court is erroneous. By looking at the deed, we have no hesitation in holding that the agreement is one for conducting the business of the first defendant. We are excluding oral evidence from consideration as none of the exceptions is attracted.

23. The plaintiff adduced oral and documentary evidence either to dilute the obligation/standing of the plaintiff in the agreement dated 16.08.1967, or to claim the status of a deemed tenant. The first and foremost document relied on is the registration certificate under the Bombay Sales Tax Act, 1959. The plaintiff, as conductor of the business, has assumed the responsibility for the incidences of running the business. This includes payment of sales tax as well. Including the subject business in the dealership of the plaintiff would not materially alter the position under the agreement dated 16.08.1967. Further, a photocopy of the registration certificate is exhibited before this Court. We are convinced that, in the facts and circumstances of the case, the said photocopy of the registration certificate will not change the status of the plaintiff from the conductor of the business to a sub-tenant and, by operation of law, a deemed tenant. Similarly, the receipts evidencing payment of royalty would militate against the status of deemed tenancy claimed by the plaintiff. As noted earlier, sections 91 and 92 are substantive provisions under the Evidence Act, 1872. Unless and until the case falls under one or the other exceptions enabling receipt of oral evidence on a written document, the court is precluded from entertaining oral evidence. The document or deed interpreted in a particular case is not relied upon, but the subject deed is construed on well-established principles. The law recognises both ownership and possession of an owner of a property. A lease recognises the outcome of a rightful separation of ownership and possession between lessor and lessee. Section 108 of The Transfer of Property Act, 1882 deals with the rights of the lessor and lessee. Under the said section, one of the conditions is that

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the lessor is bound by lessee's request to put lessee in possession of the property. In the case on hand, admittedly, defendant no. 1 is in possession of the property from defendant no. 2. Whereas the Agreement of Conducting business does not deal with the possession so enjoyed by defendant no. 1 in favour of the plaintiff. The absence of such a crucial clause in the agreement dated 16.08.1967 is a vital circumstance in construing the subject matter of the said agreement. This is an added circumstance to hold that what has been entrusted is to run the business in the plaint schedule but not occupying the plaint schedule under leave and licence. In the case on hand, the terms of the agreement dated 16.08.1967 are clear that the entrustment to the plaintiff is the ownership of the hotel business of the first defendant and not the tenancy right of the first defendant in favour of the plaintiff.

24. From the above perspective and for the reasons stated supra, we are in agreement with the view taken by the first appellate court and the Impugned Order of the High Court. The Civil Appeal fails and is accordingly dismissed with costs quantified at Rs. 1,00,000/- payable to defendant no. 1. Pending applications, if any, shall stand disposed of.

*Result of the case:* Appeal dismissed.

<sup>†</sup>*Headnotes prepared by:* Nidhi Jain