

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

C.R.No.92 of 2016

**Ch. Ahmed Nadeem**  
***VERSUS***  
**Mr. Abdul Qayyum & another**

**Date of Hearing:** 10.03.2016  
**Petitioner by:** Mr. Khurram M. Hashmi, Advocate,  
**Respondents by:** Mr. Atiq-ur-Rehman Siddiqui, Advocate

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**MIANGUL HASSAN AURANGZEB, J:-** Through the instant Civil Revision Petition, the petitioner, Ch. Ahmad Nadeem, has impugned the Order dated 23.02.2016, passed by the Court of learned Additional District Judge-West, Islamabad (West), whereby respondent No.1's appeal against the Order dated 16.02.2016, passed by the Court of learned Civil Judge 1st Class-West, Islamabad, was allowed. Vide the said Order dated 16.02.2016, the learned Civil Court allowed the petitioner's application for temporary injunction under Order XXXIX, Rules 1 & 2 of the Code of Civil Procedure, 1908 ("CPC"), which was filed along with the petitioner's suit for declaration, permanent & mandatory injunction etc.

2. The facts essential for the disposal of the instant revision petition are that on 22.02.2013, the petitioner and respondent No.2 entered into a Commercial License Agreement ("the Agreement") whereunder Kiosk No.K-1, Ground Floor, Safa Gold Mall, Plot No.5, Sector F-7, Islamabad, measuring 49 sq. feet ("the Kiosk") was occupied by the petitioner as a licensee. At the Kiosk, the petitioner established a shop under the name & style of "The Necklace". The said Agreement had a validity period of ten years and the petitioner was to sell fashion accessories at the Kiosk. The license fee was agreed to be 12% of the net sales verified, calculated, assessed and determined by an auditor in accordance with the said Agreement. It appears that disputes developed between the petitioner and respondent No.2 which caused respondent No.2 to issue

termination notice dated 19.03.2015 to the petitioner. On 05.06.2015, respondent No.2 filed an eviction petition under Section 17 (2) of the Islamabad Rent Restriction Ordinance, 2001 ("IRRO") before the Court of learned Rent Controller, Islamabad. The petitioner resisted this petition by filing a reply. On 05.01.2016, respondent No.2 withdrew the said petition. Apparently after this, the respondents restrained the petitioner from having access to the Kiosk. This caused the petitioner to file a suit for declaration, mandatory & permanent injunction etc., before the Court of learned Civil Judge, Islamabad. Along with the said suit, the petitioner filed an application for temporary injunction. Respondent No.1 contested the said suit by filing a written statement. Vide Order dated 16.02.2016, the learned Civil Court allowed the petitioner's application for temporary injunction. The learned Civil Court came to the *prima facie* conclusion that on account of respondent No.1 invoking the jurisdiction of the learned Rent Controller, there was a relationship of landlord and tenant between the parties. Respondent No.1 challenged the said order dated 16.02.2016 in an appeal before the Court of Additional District Judge (West), Islamabad. Vide judgment dated 23.02.2016, the learned Appellate Court allowed respondent No.1's appeal. Aggrieved by the said appellate order, the petitioner has filed the instant civil revision petition.

3. Learned counsel for the petitioner submitted that the Agreement executed between the petitioner and respondent No.2 on 22.02.2013 is, in effect, a lease agreement which is valid for a period of ten years, i.e. until 22.02.2023; that this fact was acknowledged by respondent No.2 when an eviction petition under Section 17(2) of the IRRO was filed seeking the eviction of the petitioner from the Kiosk; that the termination notice dated 19.03.2015, was not issued by respondent No.2 in accordance with the procedure agreed between the parties in Clauses 23 & 24 of the said Agreement; that the license issued by respondent No.2 to the petitioner in terms of the Agreement was irrevocable because the petitioner had carried out works, which were permanent in nature; that respondent No.2 could

not terminate the Agreement as the same was irrevocable in terms of Section 60 (b) of the Easements Act, 1882; and that as the suit between the parties is still pending adjudication, the respondents have yet to prove, by adducing evidence, that the petitioner had breached the provisions of the said Agreement. In support of his submissions, learned counsel for the petitioner placed reliance on the cases of Digital World Pakistan (Pvt.) Limited Vs. Samsung Gulf Electronics PZE reported as PLD 2010 Karachi 274, Muhammad Jawaaid Vs. The Province of Sindh reported as 2008 CLC 348, Green Fuels Vs. Shell Pakistan Limited reported as 2005 CLC 1602, Diamond Food Industries Ltd Vs. Joseph Wolf GmbH reported as 2004 CLD 343, Baba Handicraft Vs. Civil Aviation Authority reported as 1997 CLC 1005, Noor Muhammad Vs. Civil Aviation Authority reported as 1987 CLC 393 and M.F. De Souza Vs. Children's Education Uplift Society reported as AIR 1959 Bombay 533.

4. Learned counsel for respondent No.2 submitted that the Agreement between the parties was a license, and not a lease; that the petitioner had breached his obligations under the said Agreement which caused respondent No.2 to terminate the same; that the petitioner had not carried out works of permanent nature at the Kiosk and there were no pleadings to this effect in the suit; that in the said suit, the petitioner had admitted that he was a licensee; that in the said Agreement, it was expressly mentioned that the relationship between the parties is not that of a landlord and a tenant; that the said Agreement was a grant or a concession which was revocable; that the eviction petition had been mistakenly filed by respondent No.2; that in reply to the eviction petition, the petitioner has clearly taken the position that he was a licensee; that even if the termination of the said Agreement was not in accordance with the terms stipulated therein, the petitioner could have instituted a suit for damages; and that the said Agreement between the parties was not a specifically enforceable agreement, therefore, the question of the grant of an injunction did not arise. In support of his submissions, the learned counsel for respondent No.2 placed reliance on the

cases of M.A. Naser Vs. Chairman, Pakistan Eastern Railways & others reported as PLD 1965 SC 83, Daewoo Pakistan Motorway Service Limited Vs. Sunshine Service reported as 2009 CLC 406, Aftab Hussain through Attorney Vs. Government of Sindh through Chief Secretary and two others reported as 2015 MLD 1688, Malik Muhammad Jawaid Vs. Province of Sindh and others reported as 2008 CLC 348, Kassamali Vs. Mst. Shakra Begum reported as PLD 1968 Karachi 307, Messrs Universal Business Equipment Pvt. Ltd Vs. Kokusai Commerce Inc. and two others reported as 1995 MLD 384 and Messrs Sign Source Vs. Messrs Road Trip Advertisers and another reported as 2005 CLC 1982.

5. I have heard the arguments of learned counsel for the parties and perused the record with their able assistance.

6. The main leg of the arguments of the learned counsel for the petitioner was that the Agreement/license could not be prematurely terminated/revoked and that the petitioner could not be restrained by the respondents from having access to the Kiosk as the license granted to him had become irrevocable in view of the provisions of Section 60 (b) of the Easements Act, 1882. This, according to the petitioner, is because, acting upon the license, the petitioner had constructed structures of a permanent character on the Kiosk by spending money on it, thereby satisfying all the requirements of the said Section.

7. Section 60 of the Easements Act, 1882, reads as under:-

*"Section. 60: License when revocable- A license may be revoked by grantor, unless-*

*a) It is coupled with a transfer of property and such transfer is in force*

*b) the licensee, acting upon the license, has executed a work of a permanent character and incurred expenses in the execution."*

8. The general rule is that the grantor can revoke a license unless the exception provided in Section 60 (b) is in existence. On the principles contained in Section 60 (b) of the Easements Act, 1882, a license becomes irrevocable provided the following three conditions are satisfied:-

- (1) that the occupier must be a licensee;
- (2) that he should have acted upon the license; and

- (3) that executed a work of permanent character and incurred expenses for the execution of the work.

9. The onus of proving these conditions/facts lies upon the licensee and in the absence of any evidence on these questions, the license could not be irrevocable under Section 60 (b) of the said Act. In other words, a license may be revoked by the grantor, unless the licensee in terms of the license has set up a construction of permanent nature and has incurred expenditure for such construction.

10. The first question that arises for my consideration is whether or not in the suit filed by the petitioner before the learned Civil Court, a case of irrevocability of license on the ground covered by Section 60 (b) of the Easements Act, 1882, had at all been pleaded. I have scrutinized the averments made in the suit filed by the petitioner before the learned Civil Court. I am not in a position to come to hold that such a plea had been taken in the suit. There had been no averment in the suit that the petitioner acting upon the license had executed works of permanent character and had incurred expenses in such execution as a consequence of which the license has become irrevocable.

11. The petitioner, in his suit, did, however, plead that he was a licensee of the Kiosk and that he had started his business at the Kiosk by investing Rs.500,000/-. It was also pleaded that the Agreement was for a period of ten years and that the termination notice had been issued by the respondents in violation of the terms of the Agreement. In order to bring a case within the ambit of Section 60 (b) of the Easements Act, 1882, and to render the license irrevocable, four conditions are required to be satisfied, namely, (a) that there has been a license pursuant to which the licensee occupies the land; (b) the licensee executed a work of a permanent character; (c) he did so acting upon the license; and (d) he incurred expenses in the execution. These pre-conditions have not been pleaded in the suit and, therefore, I am of the considered opinion that a case of irrevocability of license under Section 60 (b) of the Easements Act had not been pleaded by the petitioner. The

learned counsel for respondent No.2 is, therefore, correct in his submission that the suit instituted by the plaintiff is silent on "works of a permanent character" and the expenses incurred on such works by the petitioner on the Kiosk where he had established his business pursuant to the terms of the said Agreement.

12. The Superior Courts have time and again indicated that no party should be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it. In the present case not only has a case of non-irrevocability of license under Section 60 (b) of the Easements Act, 1882, not been pleaded in the suit, but there has also been no such issue framed by the learned Civil Court. It is well settled that a point that has not been raised before the original court should not be permitted to be raised for the first time in the revisional jurisdiction. It is also settled law that parties are bound by the pleadings. Pleadings are treated as a foundation of a case especially in civil matters and a fact having not been pleaded cannot be allowed to be taken or agitated at a subsequent stage. The maxim "*secundum allegata et probata*" (according to what is alleged and proved) can be aptly pressed into service here. It is an age-old principle that a party to a litigation can only succeed according to what was alleged and proved. As the essential prerequisites for invoking the protection under Section 60 (a) & (b) of the Easements Act, 1882, have not been satisfied by the petitioner in his suit, he cannot, in his revision petition improve his case by pleading that he had carried out works of a permanent character and incurred expenses on the Kiosk.

13. A reference to case law, at this juncture, would be apposite:

- (a) In the case of Chevalier I.I. Iyyappan Vs. The Dharmodayam Company, Trichur, reported as AIR 1966 SC 1017, the plea of license or its irrevocability was neither raised nor adjudicated upon by the trial court. The Supreme Court held that the plea cannot be raised for the first time in appeal.
- (b) In the case of Mahadeo Tatu Naik Vs. Ramakant Ataram, reported as AIR 1985 Bombay 347, the question was,

whether the plaintiff, who did not raise the case of irrevocability of license under Section 60 (b) of the Easement Acts, 1882, in the trial court, should be permitted to raise the point for first time in the appeal. The plaintiff had admitted that the defendant was his licensee. Yet, having regard to the fact that the case under Section 60 (b) of the Easement Acts, 1882 was not raised in the trial court, it was held that the admission that the defendant was a licensee did not imply that the question of irrevocability of license was "before the court". When applied to a case where only the status of licensee is pleaded or admitted this judgment means that, even where the status of the defendant as licensee is admitted, such admission cannot be stretched to imply that work of permanent character was executed or that it was executed "acting upon the license". These facts have to be pleaded.

- (c) In the case of Raghubir Saran Vs. Param Kirti Saran, reported as AIR 1962 All 444, the Allahabad High Court did not allow the case under Section 60 (b) of the Easement Acts, 1882, to be urged for the first time in appeal.
- (d) In the case of Radhakrishna Hazra Vs. Joykrishna Hazra, reported as AIR 1967 Calcutta 204, the Calcutta High Court emphasized that it was not enough for a licensee to erect permanent structures, he must prove that such structures were built "acting upon the license". It follows that if there is no pleading in regard to "acting upon the license", Clause (b) of Section 60 of the Act does not come into play.

14. Consequently, there is substance in the objection raised by the learned counsel for respondent No.2, that no plea on the basis of which the benefit of Section 60 (b) of the Easements Act, 1882, was being sought by the petitioner, had been raised by the petitioner in the suit, and that no issue had been framed and, therefore, no evidence could be led by the petitioner before the learned Civil Court regarding the availability of the benefit of Section 60 (b) of the Easements Act, 1882, and, therefore, the same could not be allowed to be raised for the first time in appeal or in revision.

15. However, in the case of Ram Sarup Gupta Vs. Bishun Narain Inter Collegiate, reported as AIR 1987 SC 1242, the importance of pleading of the right under Section 60 (b) of the Easements Act, 1882, was considered, and certain principles were laid down, which are as follows:-

*“The question which falls for consideration is whether the respondents in their written statement have raised the necessary pleading that the license was irrevocable as contemplated by Section 60(b) of the Act and, if so, is there any evidence on record to support that plea. It is well settled that in the absence of pleading, evidence, if any, produced by the parties cannot be considered. It is also equally settled that no party should be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it. The object and purpose of pleading is to enable the adversary party to know the case it has to meet. In order to have a fair trial it is imperative that the party should state the essential material facts so that other party may not be taken by surprise. The pleadings however should receive a liberal construction, no pedantic approach should be adopted to defeat justice on hair splitting technicalities. Sometimes, pleadings are expressed in words which may not expressly make out a case in accordance with strict interpretation of law, in such a case it is the duty of the Court to ascertain the substance of the pleadings to determine the question. It is not desirable to place undue emphasis on form, instead the substance of the pleadings should be considered. Whenever the question about lack of pleading is raised the enquiry should not be so much about the form of the pleadings, instead, the court must find out whether in substance the parties knew the case and the issues upon which they went to trial. Once it is found that in spite of deficiency in the pleadings parties knew the case and they proceeded to trial on those issues by producing evidence, in that event it would not be open to a party to raise the question of absence of pleadings in appeal.”*

16. I make it clear that I am considering the question whether the petitioner is entitled to an interim injunction on the basis of the plea that the Agreement (license) between the petitioner and respondent No.2 is irrevocable, even though I have held that the petitioner is not entitled to agitate this question for the first time in appeal or revision, because lengthy arguments have been advanced by the learned counsel for the contesting parties.

17. I propose, first, to deal with the contention of the learned counsel for the petitioner that the Agreement between the petitioner and respondent No.1 is in fact a lease and not a license. The mere fact that respondent No.2 filed an eviction petition under Section 17(2) of the IRRO, against the petitioner before the learned Rent Controller, does not by itself change the true nature of the Agreement from a license to a lease. In the petitioner's reply to the said eviction petition, a preliminary



objection to the jurisdiction of the learned Rent Controller, was taken by the petitioner in the following terms:-

*“That this Court lacks jurisdiction in the instant matter. Under the Islamabad Rent Restriction Ordinance, 2001 (“IRRO”), the Rent Controller can only exercise jurisdiction in cases where a relationship of landlord and tenant exists and not otherwise. The respondent is a licensee of the petitioner under the license agreement executed between them on 22/02/2013 (the “License Agreement”); the express terms of which negate the existence of any landlord and tenant relationship between the parties.” (Emphasis added)*

18. Furthermore, the petitioner, in his suit, has explicitly taken the position that he is a licensee under the Agreement. The petitioner, by pleading before more than one forum, that he is a licensee of respondent No.2 under the Agreement executed on 22.02.2013, is estopped from taking a contradictory position before the appellate and revisional court.

19. A “license” is defined in section 52 of the Easements Act, 1882, as follows:-

*“Where one person grants to another, or to a definite number of other persons; a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a license”.*

20. A “lease” is defined in section 105 of the Transfer of Property Act, 1882, as follows:-

*“A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered, periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.”*

21. The distinction between a lease and a license has been well explained in the case of Aftab Hussain Vs. Government of Sindh reported as 2015 MLD 1688, in the following terms:-

*“In the instant case as well there is no denial of the execution of license agreement and there is marked distinction in between lease and the license which may be summarily described as under:-*

- (i) In a lease there is transfer of interest in property whereas in a license this element is expressly excluded;*
- (ii) In a lease exclusive right of possession is granted to the lessee and the lessor totally excludes himself from his right;*
- (iii) The right granted to the lessee is assignable and transferable while in a license it is not so;*
- (iv) A license is a personal right. It is purely a permissible right. There is no right of exclusive possession. Notwithstanding the permission, the grantor retains control over the property. "*

22. In the said case, the Hon'ble High Court of Sindh, rejected the plaint in a suit for permanent injunction etc., where the termination of a license was the bone of contention between the parties. The perusal of the Agreement between the petitioner and respondent No.1 shows that it has all the attributes of a license.

23. In the instant case, the petitioner and respondent No.2 have explicitly agreed that the Agreement would not be construed as to amount to creation of a lease. It was also expressly agreed that the petitioner and respondent No.2 had no intention to create any relationship of landlord and tenant. Accepting the contention of the learned counsel for the petitioner would be tantamount to rewriting the agreement between the parties and attributing a character to the Agreement which the parties have expressly excluded. The parties were at *ad-idem* on the Agreement being a license and that is indeed what it is. Hence, the learned Civil Court erred by coming to a *prima facie* view that a relationship of landlord and tenant existed between the parties.

24. As regards the reliance placed by the learned counsel for the petitioner on Section 60 of the Easements Act, 1882, and his submission that the said Agreement could not be revoked or terminated because the petitioner had executed works of a permanent character and had incurred expenses on the Kiosk, suffice it to say that such a contention is belied by the express provisions of the said agreement. Paragraph III of the preamble to the said agreement, is reproduced herein below:-

- "(iii) It is clearly understood by the Parties that the contents of this Agreement or any part thereof will not be construed or interpreted in a manner as to amount to creation of an easement, lease or any other interest*

*except what is explicitly stated in this Agreement in favour of the Licensee in respect of the Licensed Kiosk as defined in Item No.1 of Schedule 2 and as marked out in the plan of the Mall showing the Licensed Kiosk, annexed herewith as **Schedule 3 ("Plan")**. It has also been expressly made clear to the License that the Licensor has no intentions whatsoever to create any relationship of landlord and tenant between the Parties and the Licensee to turn also agrees and expressly accepts the same." (emphasis added)*

25. The principles of "justice, equity and good conscience" on which Section 60(b) of the Easements Act, 1882, rests may apply in the facts and circumstances of a given case but that is not to say that though the Easements Act, 1882, does not apply, the provisions of Section 60(b) of the said Act would still operate. As the Agreement between the petitioner and respondent No.2 was not to be construed as to amount to the creation of the an easement, the reliance of the learned counsel for the petitioner on Section 60 (b) of the Easements Act, 1882, is wholly misplaced.

26. As regards the case law relied upon by the learned counsel for the petitioner, in the case of Green Fuels Vs. Shell Pakistan Limited, reported as 2005 CLC 1602, the plaintiff had established a C.N.G. station at the allocated site. The plaintiff/licensee, acting upon the license, was held to have executed works of a permanent character and incurred substantial expenses in the execution. Hence, it was held that it would be wholly unfair, that the licensor may be clothed with arbitrary authority to terminate the license.

27. In the case of Malik Muhammad Jawaid Vs. Province of Sindh, reported as 2008 CLC 348, under an agreement, the plaintiff had to construct a double storey building for the Officers' Club with the covered area of approximately 7000 sq. ft. and also to develop five grassy lawns and in turn he was allowed to arrange marriages and other social functions on the lawns and to facilitate such functions he was allowed to construct stores, booking office, kitchen, bride room and bath room on each lawn. The plaintiff consequently constructed a double storey building from his own funds according to the plan approved by the competent body. The Hon'ble High Court

of Sindh held that the parties had expressly covenanted to make the agreement irrevocable and that there appears to be no bar in the Easements Act, 1882, barring such a covenant. Furthermore, it was held as follows:-

*“In cases where the parties by special contract agree to make a license irrevocable, which otherwise is revocable under section 60 of the Easements Act, then the license becomes irrevocable one and the bar contained in sections 21, 42, and 56 of the Specific Relief Act would not apply and therefore, the plaint cannot be rejected on this score.”*

28. In the case of Noor Muhammad Vs. Civil Aviation Authority reported as 1987 CLC 393, it was held by the Hon'ble High Court of Sindh that for the determination of the question whether the agreement was a license or a lease would require evidence and the subsequent conduct of the parties had to be seen. In the case of Digital World Pakistan (Pvt.) Limited Vs. Samsung Gulf Electronics PZE reported as PLD 2010 Karachi 274, the Hon'ble High Court of Sindh, granted an injunction restraining a party from terminating a distributorship agreement for audio visual products. In the case of Baba Handicraft Vs. Civil Aviation Authority reported as 1997 CLC 1005, a party who was carrying on business at the airport as a licensee was refused an entry pass to the airport. The Hon'ble Court granted an interim injunction in favour of the licensee. In the case of Diamond Food Industries Ltd Vs. Joseph Wolf GmbH reported as 2004 CLD 343, injunctive relief to a licensee was not granted by the Hon'ble High Court of Sindh. In the case of M.F. De Souza Vs. Children's Education Uplift Society reported as AIR 1959 Bombay 533, it was held that other than the two classes of cases mentioned in Section 60 of the Easement Acts, 1882, where a license can be regarded as irrevocable, there was the law of contract and if the parties had agreed that the license was irrevocable or was for a certain duration, it followed that the licensor would be bound by his engagement and would not be entitled to terminate or revoke the license at his sweet will and pleasure.

29. The case law cited by the learned counsel for respondent No.1 is well supportive of his case. In the case of

M. A. Naser Vs. Chairman, Pakistan Eastern Railways, reported as PLD 1965 SC 83, it was recognized that there may be cases where parties by special contract may make the licence which is prima facie revocable under Section 60 of the Easements Act, 1882, an irrevocable one. The Hon'ble Supreme Court of Pakistan held that in cases where the licence was revocable, its revocation could not be prevented by an injunction. In the case of Ali Asghar Shah Vs. Pakistan International Airline Corporation reported as 2016 CLC 189, it has been held that even if a contract or a license is revoked without reasonable notice and during the subsistence of a contract or a license, at best the aggrieved party can claim damages, but no injunctive relief can be granted. Under Section 21 of the Specific Relief Act, 1877, those contracts cannot be specifically enforced, for the non-performance of which, compensation in money is an adequate relief. In the case of Bank Al-Falah Limited Vs. Neu Multiplex and Entertainment Square Co. Pvt. Ltd. reported as 2015 YLR 1241, a contract with a termination clause was held not to be specifically enforceable, and that breach of a contract which is not specifically enforceable cannot be prevented by way of passing an injunctive order. In the case of Muhammad Khakan Vs. Trustees of the Board of Karachi reported as 2008 SCMR 428, it has been held by the Hon'ble Supreme Court of Pakistan as follows:-

*"High Court in exercise of its revisional jurisdiction after going through the material on record and hearing the arguments of the learned counsel for the parties came to the conclusion that the petitioner had failed to establish any vested right in respect of the demised plots and his suits for declaration under Section 42 of the Specific Relief Act were not maintainable. The document relied upon by him in support of his entitlement for allotment is the order conferring a right on the petitioner to use the demised plot(s) as a licensee and a license neither confers any vested right in the licensee nor a license can claim its continuation for an unlimited period of time as the same is revocable. It is further to take into consideration very material facts and provision of law which resulted in grave and serious illegalities being committed by them in decreeing the suits by the trial court and subsequently, by confirmation thereof by the Appellate Court. On the above views High Court found that the suits were not maintainable and set aside the judgment and decrees of the*

*Appellate Court and trial Court ordering dismissal of the suits.*  
" (emphasis added)

30. I am of the view that the law laid down in the cases relied upon by the learned counsel for the petitioner does not come to his aid for the simple reason that works of a permanent character could not have been carried out by the petitioner on a Kiosk, which was no more than 49 Sq. feet. Even otherwise, works of permanent nature at the Kiosk would require prior sanction of the licensor, which is not apparent from the record. Furthermore, the Agreement between the petitioner and respondent No.2 also does not permit the former to carry out works of a permanent character. Although the learned Civil Court in its order dated 16.02.2016 had held that petitioner had invested a huge amount to run the business at the Kiosk, but inventory purchased for a business cannot be termed as expenditure on works of permanent nature, and such investment does not afford protection to a licensee from termination of a license. The petitioner, as a prudent commercial person on business had expressly agreed in the said Agreement that it shall not be construed or interpreted in a manner as to amount to the creation of an easement. The petitioner is now estopped from submitting that he had carried out permanent works at the Kiosk because he has not even pleaded so in his suit.

31. On a scrutiny of the terms of the Agreement, I do not find the same to be irrevocable. Hence, the petitioner has made out no case for the grant of an interim injunction. As the learned Civil Court has framed the issues on 16.02.2016, I must refrain from giving my opinion on whether or not the Agreement between the petitioner and respondent No.2 has been terminated in accordance with the agreed procedure. I also do not feel the need to answer the question whether or not the petitioner's suit is barred under any of the provisions of the Specific Relief Act, 1877. These are matters for the learned Civil Court to decide. As the petitioner's entitlement to interim relief is being decided through this judgment, it is pertinent to observe that the learned Civil Court, in deciding the suit, shall

not in any manner be influenced by any of the observations contained herein.

32. In the net result, therefore, the civil revision petition fails and is dismissed but in the circumstances without any order as to costs.

(MIANGUL HASSAN AURANGZEB)  
JUDGE

ANNOUNCED IN AN OPEN COURT ON \_\_\_\_\_/2016

(JUDGE)

APPROVED FOR REPORTING

(JUDGE)

Qamar Khan\*