

Amrut

**IN THE HIGH COURT OF BOMBAY AT GOA
SECOND APPEAL NO. 61 OF 2023**

1 Shri Gangaram Vassu Redkar,
aged about 52 years (Since deceased through his
legal heirs)

1(a) Vassudev G. Redkar
S/o late Gangaram Redkar
Aged 34 years, service, Indian National

1(b) Mr Vishal G. Redkar
S/o late Gangaram Redkar
Aged 33 years, service, Indian National

1(c) Miss Santosh G. Redkar
d/o late Gangaram Redkar
Aged 30 years, Indian National

1(d) Ritesh Redkar
S/o late Gangaram Redkar
Aged 25 years, Indian National

2 Smt. Sangeeta Gangaram Redkar,
Widow of Shri Gangaram Vassu Redkar,
Aged 58 Years, married, Indian National,
All above are r/o House No.352,
St. Ann's Colony Tivim Bardez Goa. ... Appellants

Versus

1 Vincente Francisco Crispino D'Souza
(Since deceased through his Legal Heirs)

1a. Mrs. Ezilda Clarke

Major of age,

1b. Mr Norman Clarke,

Major of age,

1c. Mr Mario D'Souza,

Major of age,

1d. Mrs. Linda Anjela Francisca D'Souza
Major of age,
1a, 1b, 1c and 1d above,
Are all r/o 96 Bricken Street Rd.
SW17GJJ London U.K.

2 Mrs. Maria Lilia D'Souza (Expired)
Aged 75 years, housewife,
r/o H.No.353,
St. Ann's Colony, Tivim, Bardez Goa. ...Respondents

Mr R. J. Pinto, Advocate for the Appellants.
Mr A. D. Bhobe, Ms A. Fernandes, Ms A. Bandekar and Ms N. Mayekar, Advocates for the Respondents.

CORAM: M. S. SONAK, J.

DATED : 4th APRIL 2024

ORAL ORDER:

1. Heard Mr R. J. Pinto, learned counsel for the Appellants and Mr A. D. Bhobe, learned counsel for the Respondents.
 2. This Second Appeal challenges the concurrent judgments and decrees of the trial Court and the First Appellate Court, holding that the agreement between the parties was that of leave and license and consequently ordering the Appellants/defendants to vacate the suit premises on the revocation of the licence.

3. Mr Pinto, learned counsel for the Appellants, submitted that the agreement was nothing but a camouflage to mask the real landlord-tenant relationship. He referred to clauses 6, 8, and 11 of the latest leave and license agreement dated 05.08.1997 to submit that these clauses show that not only exclusive possession was granted to the Appellants but also the real intention of the parties to constitute a tenant and not leave and license.

4. In this case, Mr Pinto submitted that the landlord was in a dominant position and the Appellants were illiterate. Mr Pinto clarified that the Appellants were not illiterate but were not highly educated enough to understand the difference between lease and license. He submitted that the two Courts had not adequately considered this relevant circumstance.

5. Mr Pinto submitted that the Respondents accepted rent even after the period specified in the agreement expired. He submitted that even the second plaintiff issued rent receipts, and after that, a plea was taken that she had never consented to the agreement based on which the Appellants were placed in possession of the suit premises.

6. Mr Pinto contended that there are inherent contradictions in the approach of the trial Court and First Appellate Court. He pointed out that on one hand, the agreement is held as null and void, and on the other hand, the two Courts have concluded that this was a case of license and not a lease.

7. Mr Pinto relied on the following decisions in support of his contentions.

1. *Delta International Ltd. Vs Shyam Sundar Ganetiwalla and another*¹;
2. *Balwantsinghji Anand Vs Bhagwantrao Ganpatrao Deshmukh*²;
3. *Capt. B. V. Dsouza Vs Antonio Fausto Fernandes*³;
4. *Jagdish Chander Khurana & Anr Vs Ghanshyam Dass*⁴;
5. *R. Swaminathan Vs Rekha Handa w/o Late S. K. Handa*⁵;
6. *Street Vs Mountford*⁶.

8. Mr Pinto also attempted to distinguish this Court's decision in *Pratap Seethapathy vs George Inacio Loyola Coutinho and another* (Second Appeal No. 5 of 2024 decided on 05.02.2024) from the Hon'ble Supreme Court's decision in *Delta International Ltd.* (supra). He submitted that the facts in the said cases were at complete variance with the facts in the present case, and, therefore, these decisions should not have been applied in the present case.

¹ (1999) 3 Supreme 485

² (1980) 0 MhLJ 459

³ (1989) 3 SCC 574

⁴ RSA No.129/1981 decided on 15.09.2010

⁵ (2002) 2 MPLJ 24

⁶ (1985) 2 ALL ER 289

9. Based on the above submissions, Mr Pinto urged the formulation of substantial questions of law set out in Para 11 of the appeal memo. In addition, Mr Pinto urged the following questions which according to him amount to substantial questions of law arising in this appeal:

- (a) Whether learned Court directing to vacate the suit house after declaring the agreements at exh. 28 colly to be bad in law, lead to perversity, being ultra vires its jurisdiction & illegal exercise of jurisdictional powers?
- (b) Whether learned courts below erred substantially in law by holding that the case of the plaintiff stood established only by the production of agreement of leave and license which has been done by the Power of attorney of plaintiff No.2(PW1); and the fact that he may not have had personal knowledge of all the facts is insignificant?
- (c) Whether both the learned Courts below failed to observe that the tenor of the language used in the said agreement/s gave rise to ambiguity, justifying deviation from the Literal Rule of construction of documents in the instant case?
- (d) Whether both the learned courts below erred substantially in law by not holding that it is not open to the owner of a premises to contend that he did not intend to create a tenancy when he was giving the exclusive possession for residential purpose to a person not related to him, with monthly rent and excluding the right to sublet & absence

of power to revoke and retain absolute control, in the written agreement between the parties?

10. Mr Bhobe learned counsel for the Respondents (original plaintiffs) submitted that the agreements, in this case, are clear and admitted no ambiguity whatsoever. He submitted that there is no question of adverting to any surrounding circumstances in such circumstances. He submitted that in any case, even if surrounding circumstances are to be adverted, there is nothing in that to suggest that the parties intended to create the relationship of tenancy and that of the licensor or licensee. He submitted that the two Courts record concurrent findings of fact, and there is no perversity whatsoever in the record of such findings. He submitted that none of the decisions relied upon by Mr Pinto apply, and none of the questions proposed are either questions of law or substantial. He relied on *Pratap Seethapathy* (supra) and *Delta International Ltd.* (supra) and urged the dismissal of this appeal.

11. The rival contentions now fall for my determination.

12. The records show the parties entered four leave and license agreements in succession. The first was on 05.08.1994, followed by the agreement dated 04.08.1995, 01.08.1996, and finally on 05.08.1997.

13. Mr Pinto pointed out that the clauses of all these four agreements are almost identical. The final agreement dated 05.08.1997 had licensed the suit premises to the Appellants up to 30.06.1998. The suit was

instituted on 12.07.1999 based on the cause of action that the Appellants refused to vacate the suit premises despite the conclusion that the term referred to in the agreement and the consequential revocation of license. Another plea was raised by the Respondents, namely for the moiety holder, i.e. the wife of the first plaintiff was not a party to the agreement, and therefore, the agreement itself was void.

14. In the suit, the damages and mesne profit were also claimed. However, there is no dispute that the trial Court declined to award any damages or make an order for mesne profit. The Respondents/plaintiffs also did not challenge the trial Court's decree to the extent it denied damages and mesne profit by either filing a cross-appeal or cross-objections before the First Appellate Court.

15. Therefore, the only issue in this second appeal is whether the two Courts were justified in holding that the relationship between the parties was that of the licensor-licensee and, based thereon, ordering the Appellants to vacate the suit premises. The other issue is whether the two Courts were justified in holding that the agreements were void and the Appellants' retention of possession based upon such void agreements was illegal and unauthorised.

16. The two Courts have adverted to various clauses of the agreement dated 05.08.1997 and concurrently held that those clauses do not detract from the relationship of the licensor or licensee. The agreements, on their

face, refer to establishing the relationship of the licensor or licensee. There is no perversity in the reasoning of the two Courts.

17. From the perusal of the agreements, there is no real scope to infer any ambiguity and, based upon such alleged ambiguity, to look into the surrounding circumstances or conduct of the parties. In any case, in the written statement the Appellants, apart from asserting that they are statutory or protected tenants, had not even pleaded any surrounding circumstances based on which it could be even remotely inferred that their relationship was that of landlord-tenant and the relationship of licensor or licensee.

18. In such matters, as held in *Delta International Ltd.* (supra), the initial focus must be on the clauses or terms of the agreements itself. Therefore, the contents of the agreement dated 05.08.1997 are transcribed verbatim for convenience of reference.

AGREEMENT OF LEAVE AND LICENCE
(1/8/1997 to 30/6/1998)

THIS AGREEMENT OF LEAVE AND LICENCE is made at Tivim, Bardez Goa on this 5th day of August of the year 1997; BETWEEN:- (1) Mr Vicente Francisco Crispino de Souza, major in age, land-owner, Indian National, resident of Tivim, Bardez Goa (hereinafter called the 'LICENSOR') of the One Part; AND (2) Smt. Sangeeta Gangaram Redkar, aged about 32 years, married, housewife, wife of Gangaram Vasu Redkar, from Bandekar wado, Morgim, Pernem Goa, daughter of Vaman Vencatesh Hadfadkar of Araovaddo, Pomburpa, Bardez Goa, Indian National, (hereinafter called the 'LICENSEE') of the Other Part.

The Expressions 'Licensor' and 'Licensee' herein used shall include the heirs, successors, legal representatives and assigns of the respective Parties hereto.

WHEREAS the Licensor is the owner in possession of the House No.353 and Outhouse No.352, situated at Tivim, Bardez Goa. And Whereas the Licensee approached the Licensor with a request to give on Leave and Licence basis to her the said outhouse No.352 for her residential purpose only. This Outhouse No.352 is hereinafter referred to as 'PREMISES' for the sake of brevity.

AND WHEREAS the Licensor is willing to grant her request.

NOW THEREFORE, this Agreement WITNESSES as follows:-

- 1- This Agreement is for a period of 11 (eleven) months only with effect from 1/8/1997 and ending on 30th June, 1998.
- 2- The Licensee shall pay a monthly licence fee of Rs.250/- (Rupees two hundred fifty only) to the Licensor or to the Licensor's representative Mr Benjamim F. de Lima, on or before the fifth (5th) day of the succeeding month OR the Licensee may deposit the said monthly Licence fee of Rs.250/- (Rupees two hundred fifty only) to the credit of the Licensor's Savings Bank A/c No.2128 in Dena Bank, Tivim (Goa)Branch, within the said time limit under advice to the said Mr. Benjamim.
- 3- However at the time of signing this Agreement, the Licensee should deposit Rs.250/- (Rupees two hundred fifty only) with the Licensor/Mr Benjamim, which amount will be returned to the Licensee after she vacates the Premises.
- 4- The Licensee shall pay the electricity and water charges bills, every month, in the hands of the said Mr. Benjamim, who will pay the same to the respective department/s.

- 5- *The Licensee shall compensate for all the damages that might be caused by her to the Premises. The same may also be adjusted with the said deposit of Rs.250/-.*
- 6- *The Licensee shall not hand over or part with the said outhouse No.352/Premises or any part thereof to any person whomsoever under any circumstances. The Licensee shall use the Premises for her own residential purpose only and not for any other purpose, and for herself, her husband and her children only, and for no one else.*
- 7- *The Licensee shall see that her children make use of the toilet and do not dirty the compound area for the natural calls.*
- 8- *The Licensee shall allow the Lessor/Mr. Benjamim to inspect the repairs of the Premises at any reasonable time during the day time with an advance notice/advice of one day to the Licensee to that effect, and that also in the presence of the Licensee.*
- 9- *On 30/6/1998 the Licensee shall hand over peaceful and vacant possession of the Premises in the hands of the Lessor/Mr Benjamim.*
- 10- *The Licensee shall keep and maintain the said Premises in neat and clean condition as it is now.*
- 11- *In case of breach of any of the terms and conditions of this Agreement, the Licensee shall be liable for eviction forthwith.*

IN WITNESS WHEREOF the Parties hereto have set their respective hands on this Agreement of Leave and Licence at the place and on the date hereinabove first written, in the presence of two attesting witnesses who have also signed hereunder.

(1) LICENSOR: Vicente Francisco
Crispino de Souza,
herein represented

by attorney

Mr. Benjamim F. de Lima Sd/- 1.8.1997

(2) LICENSEE: Sangeeta Gangaram Redkar Sd/-

WITNESSES:

(1) Sd/-

(2) Sd/-

19. The two Courts have held, and even this Court is not persuaded to disagree, that nothing in the above agreements even remotely suggests that the parties intended to establish a landlord-tenant relationship and not the relationship of licensor or licensee. The concurrent findings of fact recorded by the two Courts do not suffer from any perversity whatsoever to give rise to any substantial question of law and warrant interference in the second appeal.

20. Mr Pinto, however, focused on clauses 6, 8, and 11. In the context of clause 6, he submitted that this clause not only suggested exclusive possession with the Appellants but also restrained them from subletting the suit premises. He relied on *Capt. B. V. Dsouza vs Antonio Fausto Fernandes* to contend that the moment there is any restraint from subletting, the interference is withdrawn and that the lease was, in fact, created by the parties.

21. Firstly, the clause makes no reference whatsoever to any restraint from “subletting.” This clause is not even comparable to the clause that was construed and interpreted in *Capt. B. V. Dsouza* (supra). Secondly,

based on an interpretation of this clause, it cannot be said that the intention of the parties was to create a lease and not a license. After considering the import of a similar clause and similar argument, this Court in *Pratap Seethapathy* (supra) found no merit in the same.

22. Mr Pinto then relied on clause 8 to submit that the landlord had not retained to himself any unrestricted right to inspect the suit premises, and this was a suggestive relationship of tenancy. Mr Pinto relied on the decision of the coordinate bench of this Court in *Balwantsinghji Anand* (supra) to support this contention.

23. The facts and circumstances in *Balwantsinghji Anand* (supra) are not comparable to the facts in the present case. That apart, this was a decision delivered several years before the Hon'ble Supreme Court explained the legal position of *Delta International Ltd.* (supra). Simply because clause 8 refers to the licensor inspecting the premises after giving some reasonable notice to the licensee does not mean the intention of the parties to create a lease and not a license.

24. Mr Pinto also focused on clause 11 of the agreement, which only provides that in case of breach of any of the terms and conditions of the agreement, the licensee shall be liable for eviction forthwith. He submitted that the use of the word "eviction" suggests that the relationship between the parties was that of landlord-tenant because, normally, it is a tenant who gets evicted when there is any breach of the terms and conditions of the lease. This contention, with respect, is

entirely misconceived. Merely because the word “eviction” is employed in clause 11, no inference can be drawn that the relationship was that of a landlord-tenant and not that of a licensor-licensee.

25. There is no contradiction in the approach of the two Courts. One of the reasons for decreeing the suit was that the second plaintiff, i.e., the wife of the first plaintiff, was not a party to the execution of the agreement. The second reason, which was without prejudice, was that even if the agreements were valid, the agreements were nothing but licenses. Upon their revocation, the Appellants had no right to continue based thereon. Therefore, even the additional questions proposed by Mr Pinto do not arise or, in any case, are required to be answered against the Appellants.

26. Most of the questions formulated on behalf of the Appellants in the original appeal memo or those which were urged to be formulated at this stage can hardly be described as questions of law. They are more concerned with the nature of assailing the findings concurrently recorded by the two Courts as if this was a first appeal. In any case, even considering such questions to be questions of law or substantial questions of law, the same would have to be answered against the Appellants given the clauses of the agreement and even the attendant circumstances.

27. If the agreements were indeed leases, as is now contended on behalf of the Appellants, there is no explanation as to why the Appellants signed such agreements not once but four times in all. Each time, the Appellants

admitted that they were licensees and did not protest the terms and conditions incorporated in the agreement.

28. The defence that some power of attorney misrepresented and got executed such an agreement was vaguely pleaded. In any case, it is not even remotely established by leading any cogent evidence. Based upon casual defences that have not been made good, the Appellants succeeded in prolonging the litigation from 1999 to 2024, i.e., for 25 years. From the defences raised, it is not unreasonable to presume that attempts would be made to delay the execution considerably.

29. In *Delta International Limited* (supra), the Hon'ble Supreme Court has held that the intention of the parties is to be gathered from the document itself. The intention is mainly to be gathered from the meaning and words used in the document except where it is alleged and proved that the document is a camouflage. In the present case, the written statement does not allege, or in any case, the Appellants have failed to prove that the document was a camouflage.

30. Merely pleading that the Appellants were statutory tenants and no licensees does not make a document a camouflage. Therefore, based not merely on the nomenclature of the document but on clear and ambiguous clauses in the document, the two Courts were justified in concurrently concluding that the document spelt out a relationship of licensor or licensee amongst the parties and there was neither intention of creating nor was any statutory tenancy ever created.

31. *Delta International Limited* (supra) also provides that if the terms of the document evidencing the agreement between the parties are unclear, the surrounding circumstances and the parties' conduct must also be considered to ascertain the real relationship between the parties. Here, the terms of the documents evidencing the agreement between the parties are quite clear and unambiguous. Therefore, there is no necessity to advert to the circumstances surrounding the conduct of the parties. However, even if such surrounding circumstances or conduct of the parties is considered, there is no reason to conclude that the parties ever intended to or have created a tenancy relationship.

32. In *Delta International Limited* (supra), the Hon'ble Supreme Court has held that if a dispute arises between the very parties to the written instrument, the intention is to be gathered from the document read as a whole. The Court has held that a lease or license is a matter of contract between the parties. This contract is to be interpreted or construed on the well-laid principles of construction of contractual terms, viz., for the purpose of construction of the contracts, the intention of the parties is the meaning of the words they have used, and there can be no intention independent of that meaning.

33. The decision of the Madhya Pradesh High Court in *R. Swaminathan* (supra) turns on its peculiar facts. In that case, the Court found that the real relation between the parties was camouflaged by clever drafting. Similarly, the decision in *Jagdish Chander Khurana* (supra) also

turns on its own peculiar facts, which bear no comparable whatsoever to the oral and documentary evidence in the present matter. Though *R. Swaminathan* (supra) considers the decision of the House of Lords in *Street Vs Mountford* (supra), the same does not consider the authority to the decision of the Hon'ble Supreme Court in *Delta International Ltd.*(supra). Similarly, even *Jagdish Chander Khurana* (supra) does not consider *Delta International Ltd.* (supra), possibly because the same was delivered on 15.09.2010 and *Delta International Ltd.* (supra) was decided on 09.04.1999.

34. No case has been made to admit or entertain this second appeal for all the above reasons. This second appeal raises no questions of law, much less substantial questions of law. Even if the question about the interpretation of the agreement were to be regarded as a substantial question of law, based on material on record and the concurrent findings of fact recorded by the two Courts, such a substantial question of law would have to be answered against the Appellants. This second appeal is accordingly dismissed.

35. Civil Application No.102 of 2023 does not survive the disposal of the second appeal, and it is also dismissed accordingly.

36. The Respondents can now withdraw the amount deposited by the Appellants in this Court.

M. S. SONAK, J