IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Rajasekhar Mantha

And

The Hon'ble Justice Supratim Bhattacharya

F.A. No. 138 of 2008

Sri Goukaran Nath Mishra

Vs.

Sri Giridharilal Jalan

For the appellant : Mr. Saurabh Guhathakurata
Mr. Prabir Kr. Banerjee

For the respondent : Mr. Sayantan Bose
Mr. S. Rout

Heard On : 11.08.2023

Judgement Delivered On : 18.10.2023

Supratim Bhattacharya, J.:-

1. The instant appeal has been preferred by the appellant /defendant, being aggrieved by and dissatisfied with the Judgment and decree passed by

the Ld. Judge, 2nd Bench, City Civil Court Calcutta, on 17.02.2007 in Title Suit No. 1086 of 1999.

2. Through the aforementioned Judgment the Ld. Trial Judge has been pleased to pass decree in part on contest.

3. Through the lis the respondents/ plaintiffs have prayed for eviction of the appellant/defendant from one double room in the ground floor along with common bath and privy at premises No.3, Beadon Street , P.S.- Burtolla, Kolkata.

4. The Ld. Trial Judge passed the decree for recovery of khas possession of the suit property by evicting the defendant and has also been pleased to pass decree for Rs. 2400/- as arrear licence fees and mesne profits at the rate of Rs. 2000/- per month till the date of recovery of khas possession of the suit property.

5. The Ld. Counsel appearing on behalf of the appellant/ defendant during his argument has submitted the following:

i) The appellant was inducted as tenant in the suit premises by the respondents during the month of July 1983 at a monthly rent of Rs 400/- and subsequently the said rent was raised to Rs. 600/- per month.

ii) The Ld. Counsel has further submitted that the appellant was being granted rent receipts for paying rent from July 1986 onwards.

iii) The Ld. Counsel has also submitted that the appellant is not at all a licensee.

iv) Ld. Counsel has further submitted that the agreement dated 01.05.1996 was fraudulently made by coercion to avoid the provision of the West Bengal Premises Tenancy Act.

v) The Ld. Counsel has further submitted that the appellant does not know English and the said agreement was not read over the explained to the appellant.

vi) The Ld. Counsel has further submitted that the appellant has been residing in the suit property as a tenant since the year 1983.

vii) The Ld. Counsel has further submitted that the respondents have let out the suit premises exclusively in favour of the appellant and the respondents have no control over the same.

viii) The Ld. Counsel has further submitted that licence does not grant any interest in the land while the purported agreement created interest in the suit property in favour of the appellant.

ix) The Ld. Counsel has further submitted that the relationship between the appellant and the respondent is that of tenant and landlord and not of licensee and licensor.

x) The Ld. Counsel has further submitted that the appellant is in occupation of the suit property since 1983 without payment of any rent and the respondents had not taken any action against the appellant for eviction during the entire period.

xi) The Ld. Counsel has also submitted that in case of license the licensor only grants the right to the premises without exclusive possession thereof. He has further submitted that in the instant case the respondent has given exclusive possession of the suit premises in favour of the appellant in lieu of fixed rent, thus tenancy has been created between the respondent and the appellant.

xii) The Ld. Counsel has further submitted that he has received telephone connection from the telecommunication department which proves that he is not a licensee but a tenant having interest over the suit property.

xiii) The Ld. Counsel has relied upon the following judgments which are reported as follows:

a) AIR 1959 SC 1262.

b) AIR 1968 SC 175.

c) (1974) 1 SCC 202.

d) 2023 SCC Online Cal 798.

Banking upon the aforesaid facts the Ld. Counsel has prayed for setting aside the impugned judgment

6. Ld. Counsel appearing on behalf of the respondents has submitted the following:

i) The appellant/defendant was inducted as a licensee in respect of the suit property through an agreement dated 01.05.1996.

ii) Ld. Counsel has further submitted that the clause 1 of the said agreement clearly states that the appellant/defendant shall have no right to install electric metre or telephone connection in the suit property

iii) Ld. Counsel has further submitted that from the said agreement it is clear that only permission had been granted to the appellant/defendant to temporarily use the suit property for limited purpose and the tenure was for only two years.

iv) Ld. Counsel has further submitted that in the said agreement the expression 'license' and 'license fee' have been mentioned which also signifies that the relationship between the parties were of licensor and licensee.

v) The Ld. Counsel has further submitted that from the agreement between the parties dated 01.05.1996, which has

been exhibited, it is apparent that there is specific mention that under no circumstance the license given to the second party under the agreement shall be granted as tenancy and no tenancy right shall be constituted after any interpretation of the terms of the agreement.

vi) The Ld. Counsel in support of his contention has cited following judgments:

a) (2012) 11 SCC 713,

b) AIR 1981 Patna 142,

c) AIR 1969 Kerala 34,

d) AIR 1982 Guj 266,

e) (1999) 4 SCC 545

Banking upon the aforesaid submission the Ld. Counsel has prayed for rejection of the instant appeal.

7. From the contention of the parties it reveals that the crux of the instant lis is as to whether the relationship between the contending parties is that of landlord-tenant or licensor-licensee.

8. On going through the agreement dated 01.05.1996 it reveals that it has been specifically mentioned time and again that license has been granted and in lieu of licence licence fees have been charged. In the said agreement it has been specifically mentioned that under no circumstance the said agreement shall be construed as an agreement for tenancy.

9. The appellant/defendant though has claimed himself as tenant under the West Bengal Premises Tenancy Act but not a single rent receipt has been produced and proved before the Court.

10. The law distinguishing a licence from a lease and/or tenancy is unambiguous. In *Associated Hotels of India Ltd. V. R.N. Kapoor,* a celebrated judgment reported in AIR 1959 SC 1262= 1960(1) SCR 368, the Hon'ble Apex Court had unequivocally held that it is the intention of the parties which will be the governing factor in deciding whether a Tenancy has been created or a Licence. At paragraphs No. 26, 27, 28, and 29 Justice Subba Rao speaking for the Bench held as follows:

> ***26.*** *The first question turns upon the true construction of the document dated May 1, 1949, whereunder the respondent was put in possession of the said rooms. As the argument turns upon the terms of the said document, it will be convenient to read the relevant portions thereof. The document is described as a deed of licence and the parties are described as licensor and licensee. The preamble to the document runs thus:*
>
> *"Whereas the Licensee approached the Licensor through their constituted Attorney to permit the Licensee to allow the use and occupation of space allotted in the Ladies and Gents Cloak Rooms, at the Hotel Imperial, New Delhi, for the consideration and on terms and conditions as follows:"*
>
> *The following are its terms and conditions:*
>
> *"1. In pursuance of the said agreement, the Licensor hereby grants to the Licensee, Leave and License to use and occupy the said premises to carry on their business of Hair Dressers from 1st May, 1949 to 30th April, 1950.*
>
> *2. That the charges of such use and occupation shall be Rs 9600 a year payable in four quarterly instalments i.e. 1st immediately on signing the contract, 2nd on the 1st of August, 1949, 3rd on 1st November, 1949 and*

the 4th on the 1st February, 1950, whether the Licensee occupy the premises and carry on the business or not.

3. That in the first instance the Licensor shall allow to the Licensee leave and license to use and occupy the said premises for a period of one year only.

4. That the licensee shall have the opportunity of further extension of the period of license after the expiry of one year at the option of the licensor on the same terms and conditions but in any case the licensee shall intimate their desire for an extension at least three months prior to the expiry of one year from the date of the execution of this DEED.

5. The licensee shall use the premises as at present fitted and keep the same in good condition. The licensor shall not supply any fitting or fixture more than what exists in the premises for the present. The licensee will have their power and light meters and will pay for electric charges.

6. That the licensee shall not make any alterations in the premises without the prior consent in writing from the licensor.

7. That should the licensee fail to pay the agreed fee to the licensor from the date and in the manner as agreed, the licensor shall be at liberty to terminate this DEED without any notice and without payment of any compensation and shall be entitled to charge interest at 12 per cent per annum on the amount remaining unpaid.

8. That in case the licensee for reasons beyond their control are forced to close their business in Delhi, the licensor agrees that during the remaining period the license shall be transferred to any person with the consent and approval of the licensor subject to charges so obtained not exceeding the monthly charge of Rs 800."

The document no doubt uses phraseology appropriate to a licence. But it is the substance of the agreement that matters and not the form, for otherwise clever drafting can camouflage the real intention of the parties.

27. *What is the substance of this document? Two rooms at the Hotel Imperial were put in possession of the respondent for the purpose of carrying on his business as hair-dresser from May 1, 1949. The term of the document was, in the first instance, for one year, but it might be renewed. The amount payable for the use and occupation was fixed in a sum of Rs 9600 per annum, payable in four instalments. The respondent was to keep the premises in*

good condition. He should pay for power and electricity. He should not make alterations in the premises without the consent of the appellants. If he did not pay the prescribed amount in the manner agreed to, he could be evicted therefrom without notice, and he would also be liable to pay compensation with interest. He could transfer his interest in the document with the consent of the appellants. The respondent agreed to pay the amount prescribed whether he curried on the business in the premises or not. Shortly stated, under the document the respondent was given possession of the two rooms for carrying on his private business on condition that he should pay the fixed amount to the appellants irrespective of the fact whether he carried on his business in the premises or not.

28. *There is a marked distinction between a lease and a licence. Section 105 of the Transfer of Property Act defines a lease of immovable property as a transfer of a right to enjoy such property made for a certain time in consideration for a price paid or promised. Under Section 108 of the said Act, the lessee is entitled to be put in possession of the property. A lease is therefore a transfer of an interest in land. The interest transferred is called the leasehold interest. The lessor parts with his right to enjoy the property during the term of the lease, and it follows from it that the lessee gets that right to the exclusion of the lessor. Whereas Section 52 of the Indian Easements Act defines a licence thus:*

"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 licence."

Under the aforesaid section, if a document gives only a right to use the property in a particular way or under certain terms while it remains in possession and control of the owner thereof, it will be a licence. The legal possession, therefore, continues to be with the owner of the property, but the licensee is permitted to make use of the premises for a particular purpose. But for the permission, his occupation would be unlawful. It does not create in his favour any estate or interest in the property. There is, therefore, clear distinction between the two concepts. The dividing line is clear though sometimes it becomes very thin or even blurred. At one time it was thought that the test of exclusive

possession was infallible and if a person was given exclusive possession of a premises, it would conclusively establish that he was a lessee. But there was a change and the recent trend of judicial opinion is reflected in Errington v. Errington [(1952) I All ER 149] , wherein Lord Denning reviewing the case-law on the subject summarizes the result of his discussion thus at p. 155:

"The result of all these cases is that, although a person who is let into exclusive possession is, prima facie, to be considered to be tenant, nevertheless he will not be held to be so if the circumstances negative any intention to create a tenancy."

The court of appeal again in Cobb v. Lane [(1952) I All ER 1199] considered the legal position and laid down that the intention of the parties was the real test for ascertaining the character of a document. At p. 1201, Somervell, L.J. stated:

"… the solution that would seem to have been found is, as one would expect, that it must depend on the intention of the parties."

Denning, L.J. said much to the same effect at p. 1202:

"The question in all these cases is one of intention : Did the circumstances and the conduct of the parties show that all that was intended was that the occupier should have a personal privilege with no interest in the land?"

The following propositions may, therefore, be taken as well established : (1) To ascertain whether a document creates a licence or lease, the substance of the document must be preferred to the form; (2) the real test is the intention of the parties — whether they intended to create a lease or a licence; (3) if the document creates an interest in the property, it is a lease; but, if it only permits another to make use of the property, of which the legal possession continues with the owner, it is a licence; and (4) if under the document a party gets exclusive possession of the property, prima facie, he is considered to be a tenant; but circumstances may be established which negative the intention to create a lease. Judged by the said tests, it is not possible to hold that the document is one of licence. Certainly it does not confer only a bare personal privilege on the respondent to make use of the rooms. It puts him in exclusive possession of them, untrammelled by the control and free from the directions of the appellants. The covenants are those that are usually

found or expected to be included in a lease deed. The right of the respondent to transfer his interest under the document, although with the consent of the appellants, is destructive of any theory of licence. The solitary circumstance that the rooms let out in the present case or situated in a building wherein a hotel is run cannot make any difference in the character of the holding. The intention of the parties is clearly manifest, and the clever phraseology used or the ingenuity of the document-writer hardly conceals the real intent. I, therefore, hold that under the document there was transfer of a right to enjoy the two rooms, and, therefore, it created a tenancy in favour of the respondent.

29. *The next ground turns upon the construction of the provisions of Section 2 of the Act. Section 2(b) defines the term "premises" and the material portion of it is as follows:*

"'Premises' means any building or part of a building which is, or is intended to be, let separately … but does not include a room in a dharmashala, hotel or lodging house."

What is the construction of the words "a room in a hotel"? The object of the Act as disclosed in the preamble is" to provide for the control of rents and evictions, and for the lease to Government of premises upon their becoming vacant, in certain areas in the Provinces of Delhi and Ajmer-Merwara". The Act was, therefore, passed to control exorbitant rents of buildings prevailing in the said States. But Section 2 exempts a room in a hotel from the operation of the Act. The reason for the exemption may be to encourage running of hotels in the cities, or it may be for other reasons. Whatever may be the object of the Act, the scope of the exemption cannot be enlarged so as to limit the operation of the Act. The exemption from the Act is only in respect of a room in a hotel. The collocation of the words brings out the characteristics of the exempted room. The room is part of a hotel. It partakes its character and does not cease to be one after it is let out. It is, therefore, necessary to ascertain the meaning of the word "hotel". The word "hotel" is not defined in the Act. A hotel in common parlance means a place where a proprietor makes it his business to furnish food or lodging or both to travellers or other persons. A building cannot be run as a hotel unless services necessary for the comfortable stay of lodgers and boarders are maintained. Services so maintained vary with the standard of the hotel and the class of persons to which it caters; but the amenities must have relation to the hotel business. Provisions for heating or

lighting, supply of hot water, sanitary arrangements, sleeping facilities, and such others are some of the amenities a hotel offers to its constituents. But every amenity however remote and unconnected with the business of a hotel cannot be described as service in a hotel. The idea of a hotel can be better clarified by illustration than by definition and by giving examples of what is a room in a hotel and also what is not a room in a hotel : (1) A owns a building in a part whereof he runs a hotel but leases out a room to B in the part of the building not used as hotel; (2) A runs a hotel in the entire building but lets out a room to B for a purpose unconnected with the hotel business; (3) A runs a hotel in the entire building and lets out a room to B for carrying on his business different from that of a hotel, though incidentally the inmates of the hotel take advantage of it because of its proximity; (4) A lets out a room in such a building to another with an express condition that he should cater only to the needs of the inmates of the hotel; and (5) A lets out a room in a hotel to a lodger, who can command all the services and amenities of a hotel. In the first illustration, the room has never been a part of a hotel though it is part of a building where a hotel is run. In the second, though a room was once part of a hotel, it ceased to be one, for it has been let out for a non-hotel purpose. In the fifth, it is let out as part of a hotel, and, therefore, it is definitely a room in a hotel. In the fourth, the room may still continue as part of the hotel as it is let out to provide an amenity or service connected with the hotel. But to extend the scope of the words to the third illustration is to obliterate the distinction between room in a hotel and a room in any other building. If a room in a building, which isnot a hotel but situated near a hotel, is lot out to a tenant to carry on his business of a hair-dresser, it is not exempted from the operation of the Act. But if the argument of the appellants be accepted, if a similar room in a building, wherein a hotel is situated is let out for a similar purpose, it would be exempted. In either case, the tenant is put in exclusive possession of the room and he is entitled to carry on his business without any reference to the activities of the hotel. Can it be said that there is any reasonable nexus between the business of the tenant and that of the hotel. The only thing that can be said is that a lodger in a hotel building can step into the saloon to have a shave or haircut. So too, he can do so in the case of a saloon in the neighbouring house. The tenant is not bound by the contract to give any preferential treatment to the lodger. He may take his turn along with

others, and when he is served, he is served not in his capacity as a lodger but as one of the general customers. What is more, under the document the tenant is not even bound to carry on the business of a hair-dresser. His only liability is to pay the stipulated amount to the landlord. The room, therefore, for the purpose of the Act, ceases to be a part of the hotel and becomes a place of business of the respondent. As the rooms in question were not let out as part of a hotel or for hotel purposes, I must hold that they are not rooms in a hotel within the meaning of Section 2 of the Act.

11. The law of licence as distinguished from lease as laid down in *Associated Hotels (supra)* has been thereafter reiterated in *Delta International Ltd. V. Shyam Sundar Ganeriwalla & Anr.* reported in *(1999) 4 SCC 545* wherein at paragraph Nos. 16,17, 18 and 19 has been held as follows:

16. Learned counsel for the respondent had also relied upon the decision of this Court in the case of Sohan Lal Naraindas v. Laxmidas Raghunath Gadit [(1971) 1 SCC 276, 279] wherein the Court has observed as under: (SCC pp. 279-80, paras 6 & 9)

"6. An attempt was deliberately made to camouflage the true nature of the agreement, by reciting in several clauses that the agreement was for lease and licence and it emphasised the pretence, it was also recited that the defendant was not to have any right as tenant or sub-tenant in respect of the loft.

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[(1997) 2 SCC 706]. Intention of the parties to an instrument must be gathered from the terms of the agreement examined in the light of the surrounding circumstances. The description given by the parties may be evidence of the intention but is not decisive. Mere use of the words appropriate to the creation of a lease will not preclude the agreement operating as a licence. A recital that the agreement does not create a tenancy is also not decisive. The crucial test in each case is whether the instrument is intended to create or not to create

an interest in the property the subject-matter of the agreement. If it is in fact intended to create an interest in the property it is a lease, if it does not, it is a licence. In determining whether the agreement creates a lease or a licence the test of exclusive possession, though not decisive, is of significance."

(emphasis added)

From the aforesaid discussion what emerges is:

(1) To find out whether the document creates a lease or a licence the real test is to find out "the intention of the parties"; keeping in mind that in cases where exclusive possession is given, the line between a lease and a licence is very thin.

(2) The intention of the parties is to be gathered from the document itself. Mainly, the intention is to be gathered from the meaning and the words used in the document except where it is alleged and proved that the document is a camouflage. If the terms of the document evidencing the agreement between the parties are not clear, the surrounding circumstances and the conduct of the parties have also to be borne in mind for ascertaining the real relationship between the parties.

(3) In the absence of a written document and when somebody is in exclusive possession with no special evidence how he got in, the intention is to be gathered from the other evidence which may be available on record, and in such cases exclusive possession of the property would be the most relevant circumstance to arrive at the conclusion that the intention of the parties was to create a lease.

(4) If the dispute arises between the very parties to the written instrument, the intention is to be gathered from the document read as a whole. But in cases where the landlord alleges that the tenant has sub-let the premises and where the tenant in support of his own defence sets up the plea of a mere licensee and relies upon a deed entered into, inter se, between himself and the alleged licensee, the landlord who is not a party to the deed is not bound by what emanates from the construction of the deed; the tenant and the sub-tenant may jointly set up the plea of a licence against the landlord which is a camouflage; in such cases, the mask is to be removed or the veil is to be lifted and the true intention behind a facade of a self-serving conveniently drafted instrument is to be gathered from all the relevant circumstances. Same would be the position where the owner

of the premises and the person in need of the premises executes a deed labelling it as a licence deed to avoid the operation of rent legislation.

(5) Prima facie, in the absence of a sufficient title or interest to carve out or to create a similar tenancy by the sitting tenant in favour of a third person, the person in possession to whom the possession is handed over cannot claim that the sub-tenancy was created in his favour; because a person having no right cannot confer any title of tenancy or sub-tenancy. A tenant protected under statutory provisions with regard to occupation of the premises having no right to sub-let or transfer the premises, cannot confer any better title. But, this question is not required to be finally determined in this matter.

(6) Further lease or licence is a matter of contract between the parties. Section 107 of the Transfer of Property Act, 1882 inter alia provides that leases of immovable property may be made either by a registered instrument or by an oral agreement accompanied by delivery of possession; if it is a registered instrument, it shall be executed by both the lessee and the lessor. This contract between the parties is to be interpreted or construed on the well-laid principles for construction of contractual terms, viz., for the purpose of construction of 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; when the terms of the contract are vague or having double intendment, one which is lawful should be preferred; and the construction may be put on the instrument perfectly consistent with his doing only what he had a right to do.

17. For construction of contracts between the parties and for the interpretation of such document, learned Senior Counsel, Mr Desai has rightly relied upon some paragraphs from The Interpretation of Contracts by Kim Lewison, Q.C. as under:

"1.03 For the purpose of the construction of contracts, the intention of the parties is the meaning of the words they have used. There is no intention independent of that meaning.

6.09 Where the words of a contract are capable of two meanings, one of which is lawful and the other unlawful, the former construction should be preferred.

Sir Edward Coke [Co. Litt. 42a] expressed the proposition thus:

'It is a general rule, that whensoever the words of a deed, or of one of the parties without deed, may have a double intendment and the one standeth with law and right, and the other is

wrongful and against law, the intendment that standeth with law shall be taken.'

In more modern times that statement was approved by the Privy Council in Rodger v. Comptoir D'Escomple de Paris [(1869) LR 2 PC 393 : 16 ER 618] in which Sir Joseph Napier, delivering the advice of the Board said:

'The rule that words shall be construed most strongly against him who uses them gives place to a higher rule; higher because it has a moral element, that the construction shall not be such as to work a wrong.'

Similarly, in Fausset v. Carpenter [(1831) 2 Dow & Cl 232 : 6 ER 715] the House of Lords accepted the submission of counsel that the court:

'… in judging of the design and object of a deed, will not presume that a party executing the deed meant to do and did what he was wrong in doing, when a construction may be put on the instrument perfectly consistent with his doing only what he had a right to do.'

However, the question of construction should not be approached with a leaning in one direction or another. Thus although the law frowns upon covenants in restraint of trade, nevertheless such a covenant should not be approached on the basis that it is prima facie illegal. 'You are to construe the contract, and then see whether it is legal.'

Illustrations

1. A bond was conditioned to assign all offices. It was held that it should be construed as limited to those offices which it was lawful to assign. Harrington v. Kloprogge [(1785) 2 Brod & B 678 n : 129 ER 1127] .

2. A contract for the assignment of a lease provided that if licence to assign was delayed beyond a certain date, the purchaser would pay the purchase price to the vendor and the vendor would 'thereupon allow the purchaser to enter into occupation pending completion' and the purchaser would pay the rent and other outgoings. It was held that 'allow' meant 'lawfully allow', and consequently did not cover entry into occupation in breach of covenant. Cantor Art Services Ltd. v. Kenneth Bieber Photography Ltd. [(1969) 1 WLR 1226 : (1969) 3 All ER 843, CA] "

18. In our view, the submission of the learned counsel for the appellant requires to be accepted because as stated above, it is nowhere pleaded that the deed executed between the parties is a camouflage to evade the rigours of the provisions of the Rent Act nor is it stated that a sham document is executed for

> *achieving some other purpose. In these set of circumstances, the intention of the parties is required to be gathered from the express words of various terms provided by them in the deed. For this purpose, clause 12 of the document is to be taken into consideration and due weight is required to be given to what the parties have stated. It provides as under:*
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> > *"12. It is hereby expressly agreed upon and declared by and between the parties that these presents shall not be treated or used or dealt with or construed by the parties in any way as a tenancy or lease or as a document within the purview of the West Bengal Premises Tenancy Act or any modification or amendment thereof or to confer any relationship as landlord and tenant between the parties hereto."*
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> *19. The aforesaid term of the document is not provided by an illiterate layman or poor person in need of some premises for his residence or business, but is executed by two companies where it can be presumed that it is mentioned after full understanding and to avoid any wrong inference of intention. It specifically mentions that only a licence was created and not a lease. The said clause is in positive as well as negative form providing that the agreement was a licence and should not be treated or used or dealt with or construed by the parties in any way as lease or to confer any relationship as landlord and tenants between the parties. When the parties which are capable of understanding their rights fully, expressly agreed and declared that the document should not be construed in any manner as creating any relationship as landlord and tenant between them, it would be impermissible to conjecture or infer that their relations should be construed as that of landlord and tenant because certain terms mentioned in the deed can have a double intendment. As stated above, the intention of the parties is the meaning of the words they have used and there could be no intention independent of that meaning. The learned Single Judge of the High Court rightly, therefore, held that this clause stares in his face in construing it as a lease deed."*

12. A coordinate Bench of the Calcutta High Court in *Dhananjay Paul v. Mohan Kedia reported in 2023 SCC OnLine Cal 798* had, *interalia,* upon a scrutiny of the evidence alongwith other materials on record found that

the relationship between the parties created a licence in the suit premises and not a tenancy.

13. Applying the law as laid down *(supra)* this Court upon a close examination of the material on record does not find the agreement in question dated 1st May, 1996 (Exibit- 3) to express any intention that the parties were desirous of binding themselves in a landlord tenant relationship to the contrary the said agreement (Exhibit- 3) unequivocally expresses the position that only a licence was to be created *qua* the suit premises.

14. To the best of the mind of this Court the law expressed in *Associated Hotels (supra)* shall apply to the present facts. In addition to the fact that from a plain reading of the said agreement (Exhibit- 3) only a licence was granted to the Defendant *qua* the suit premises, this Court finds the Ld. Trial Court to be correct in its findings that the Defendant has wilfully failed to substantiate that the tenancy was granted to him *qua* the suit premises in the year 1983. This Court is therefore clear in its mind that no interest having being granted in the suit premises in favour of the defendant by the plaintiffs, the contention of the defendant that he was a tenant and not a mere licence cannot be accepted.

15. This Court is of the view that the Learned Trial Court has correctly appreciated the materials on record to arrive at the conclusion that the status of the Defendant in the suit premises is that of a mere licencee. The Learned Trial Court has correctly noticed that the Defendant has

been unable to produce any evidence in support of his contention that the claimed tenancy was created in his favour in 1984 at a monthly rental of Rs. 400/-. The Learned Trial Court has found no evidence of any rent receipt for the period from 1984 till the actual agreement for licence was created on 18th May, 1996 (Exhibit-3).

16. In the further view of this court, the Learned Trial Court has also correctly noticed the bald allegation levelled by the Defendant to the effect that the agreement for licence dated 18th May, 1996 (Exibit-3) was a product of coercion. Interestingly, as noticed by the Learned Trial Court, the Defendant did not approach the police to lodge a complaint against the plaintiff. Furthermore, the Learned Trial Court correctly found the contention of the Defendant to be baseless and without evidence to show that at any point of time since alleged by the Defendant, the Defendant had applied before the Rent Controller for taking steps against the Plaintiff on the ground of non-issuance of rent receipt. To the mind of this Court from the materials placed before the Learned Trial Court, the entire case of the Defendant claiming to be a tenant is concocted, fabricated, misleading, mischievous and a sham.

17. This Court finds the application of mind by the Learned Trial Court to be faultless in as much as the agreement dated 18th May, 1996 (Exhibit-3) did not create any interest in the premises in favour of the Defendant in the nature of a lease or tenancy. The agreement was limited for two years and, on the expiry of two years, the Defendant was bound

to vacate the premises, in default thereof the Plaintiff had the right to get the premises vacated. The Defendant was also barred from bringing any separate electricity or school fees. This court also finds the stand of the Defendant relying upon telephone connection.

18. *Vide* its Judgment and Decree dated 17th February, 2007, the Learned Trial Court has found the defence of the Defendant to be *surprising* inasmuch as vital piece of evidence such as rent receipts could not be produced by him in his support. This Court finds it absurd that without any probable defence, the Defendant has managed to stay in the premises for now more than 25 years following the expiry of his licence period on 18th May, 1998.

19. In the backdrop of the foregoing discussion this appeal must fail.

20. As such this Court finds no reason to interfere with the Judgment and decree passed by the Learned Second Bench, City Civil Court at Calcutta in **Title Suit No. 1086 of 1999,** which stands **affirmed**

21. F.A. 138 of 2008 along with its connected applications stands **dismissed**.

22. Let the Lower Court Records, if called for be returned forthwith to the Learned Trial Court.

23. Registry to take steps.

24. Parties shall be entitled to act on the basis of the server copy of the judgment and order placed on the official website of the Court.

25. Urgent Xerox certified photo copies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

I agree.

(Supratim Bhattacharya, **J**.) **(Rajasekhar Mantha, J.)**