

(2014) 01 BOM CK 0014

In the Bombay High Court

Case No : Civil Revision Application No. 618 of 2013

Alankar Private Ltd.

APPELLANT

Vs

Cricket Club of India Ltd.

RESPONDENT

Date of Decision : 29-01-2014

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13, 13(1) (e), 14, 15, 15(1)
Civil Procedure Code, 1908 (CPC) — Section 115
Easements Act, 1882 — Section 52
Transfer of Property Act, 1882 — Section 108, 108(j)

Citation : (2014) 5 ABR 498

Hon'ble Judges : R.G. Ketkar, J

Bench : Single Bench

Advocate : Y.S. Jahagirdar, Senior Advocate and P.S. Dani, Advocate for the Appellant; Vijay Thorat, Senior Adv., Ashwin Ankhad and Anand Gandhi i/b and Ashwin Ankhad and Associates, Advocate for the Respondent

Judgement

R.G. Ketkar, J.—Heard Mr. Y.S. Jahagirdar, learned senior counsel for the applicants and Mr. V.A. Thorat, learned senior counsel for the respondents at length. Rule. M/s. Ashwin Ankhad & Associates waive service for the respondents. At the request and by consent of the parties, rule is made returnable forthwith and the application is taken up for final hearing. By this application under Section 115 of the Code of Civil Procedure, 1908 (for short "C.P.C."), the original defendants have challenged the Judgment and Decree dated 6-5-2013 passed by the Appellate Court of Small Causes Court at Bombay in Appeal No. 456 of 2005. By that order, the Appellate Court allowed the appeal preferred by the respondents and set aside the Judgment and Decree dated 12-10-2004 passed by the learned Judge, Court Room No. 11 of the Small Causes Court at Bombay in R.A.E. Suit No. 1553/4747 of 1988. The Appellate Court directed the defendants to deliver vacant possession of Shop No. 3-B on the ground floor of Stadium House, Veer Nariman Road, Mumbai-400 020 to the plaintiffs within three months from the date of the order. The parties shall

hereafter be referred to by their status in the trial Court.

2. The plaintiffs instituted suit against the defendants on the ground of unlawful subletting, as contemplated under Section 13 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short "the Act"). The plaintiffs alleged that by Deed of Lease dated 18-7-1955, for a period of seven years, the suit premises were leased to the defendants. In terms of Clause 2(o) thereof, the defendants were not entitled to, without the previous consent in writing of the plaintiffs, to assign, under-let or part with the possession of the demised premises or any part or portion thereof. The plaintiffs alleged that the defendants had been giving the suit premises on licence for monetary consideration or subletting the same or parting with possession thereof for conducting exhibit-cum-sale of goods of others on daily or periodical monthly basis without their consent. Thus the defendants have committed breach of the Act, as also Clause 2(o) of the lease.

3. The defendants resisted the suit by filing Written Statement and denied these assertions and contended that, on seasonal basis for temporary period they were displaying certain goods and selling them from the portion of the premises in their own account. The defendants also denied that they were sub-letting or giving on licence or parting with possession of the suit premises or any part thereof. The defendants have been in use, occupation and possession of the suit premises and every part thereof and from where they have been carrying on the business from the suit premises.

4. On the basis of the pleadings, the learned trial Judge framed the necessary issues. The parties led oral and documentary evidence. After considering the material on record, the learned trial Judge dismissed the suit. Aggrieved by that decision, the plaintiffs preferred an appeal which was allowed in the aforesaid terms. It is against this order, the original defendants have instituted this application under Section 115 of the C.P.C.

5. In support of this application, Mr. Jahagirdar invited my attention to:

(i) paragraphs 5 and 6 of the plaint,

(ii) paragraphs 10 to 12 of the Written Statement,

(iii) oral evidence of PW-1 Mr. Navnit Shivshankar Jani, Chief Accountant of the plaintiffs and in particular paragraphs 4 and 8 of the cross-examination of PW-1, and

(iv) evidence of DW-1 Mr. Maqbool Hasan Khan, one of the Directors of the defendants, as also his cross-examination.

6. Mr. Jahagirdar submitted that in the first place, PW-1 has no personal knowledge. Secondly, PW-1 clearly admitted that the defendants were in possession of the suit premises since 1994. He admitted that he has not personally seen anybody else using the suit premises except the defendants. Mr.

Jahagirdar submitted that in order to attract Section 13(1)(e) of the Act, the plaintiffs have to establish that the defendants are not in legal possession of the suit premises. The plaintiffs have to establish that the defendants have parted with possession of specific portion of the suit premises. The tenant has given definite or demarcated portion exclusively on licence. In other words, the plaintiffs have to establish that the defendants have given exclusive possession of definite portion or demarcated portion of the suit premises or have handed over the entire suit premises to a third party. Unless and until the plaintiffs establish that the defendants have given exclusive possession of the suit premises to third party or at any rate have handed over specific portion to a third party to the exclusion of the defendants, it will not amount to unlawful sub-letting, as contemplated under Section 13(1)(e) of the Act. Mr. Jahagirdar invited my attention to the cross-examination of DW-1 Maqbool. He denied that any specific portion was allowed to be used by Women's India Trust (for short, "W.I.T."). In support of this proposition, he relied upon the following decisions:

- (i) Shalimar Tar Products Ltd. Vs. H.C. Sharma and Others, , and in particular paragraphs 16 and 17 thereof,
- (ii) Jagan Nath (Deceased) through Lrs. Vs. Chander Bhan and Others, , and in particular paragraph 6 thereof,
- (iii) Gopal Saran Vs. Satyanarayana, thereof,
- (iv) M/s. Delhi Stationers and Printers Vs. Rajendra Kumar, ,
- (v) and of this Court in the case of C.C.YI (Dr.), C.C. Yi Vs. Janakidevi Anantlal Gupta and Others, .

7. Relying upon the aforesaid decisions, Mr. Jahagirdar submitted that in order to constitute sub-letting, there must be parting of the legal possession, i.e., possession with the right to include and also right to exclude others. He further submitted that mere act of allowing other persons into possession of the tenement and permitting them to use the premises for their own purposes, is not sub-letting as the tenant retains the legal possession, a breach of the covenant. In order to create a lease or sublease a right of exclusive possession and enjoyment of the property should be conferred on the other.

8. Mr. Jahagirdar further submitted that Section 13(1)(e) of the Act contemplates giving on licence unlawfully the whole or part of the premises, thereby creating interest therein. He invited my attention to the definition of the expression "licensee" appearing in Section 5(4A) of the Act and submitted that the expression "licence" used in Section 13(1)(e) of the Act is referable to the concept of licence under the Rent Act and not as contemplated under the Indian Easements Act, 1882.

9. Mr. Jahagirdar submitted that even if the tenant has given premises on licence the whole or any part of the premises, the said licence has to be coupled with interest. Merely because the tenant has given on licence the whole or any part of

the premises which is neither definite nor demarcated without creating any interest therein will not attract the ground under Section 13(1)(e) of the Act.

10. Mr. Jahagirdar invited my attention to Clause 2(o) of the Lease Deed which reads as under:

"NOT to assign underlet or part with the possession of the demised premises or any part thereof without the previous consent in writing of the Club."

Mr. Jahagirdar submitted that Clause 2(o) does not prohibit giving the premises on licence.

11. On the other hand, Mr. Thorat supported the impugned order. He invited my attention to Clause 2(o) of the Lease Deed, as also the admissions given by DW-1 in the cross-examination. He submitted that the defendants used to collect charges from the persons who were running Art Gallery from the suit premises for selling their articles. The W.I.T. used to issue their own cash memos to their customers in respect of the goods sold from the suit premises. The defendants were also recovering the service charges from the persons to whom the premises were given. He further admitted that whenever the premises were given to the persons for sale of their articles, it was for a certain period. He invited my attention to Sections 13(1)(e) and 15 of the Act, as they stood before Maharashtra Act 17 of 1973 which came into force with effect from 1-2-1973 and Sections 13(1)(e) and 15(1) after that amendment.

12. I have considered the rival submissions made by the learned counsel appearing for the parties. I have also perused the materials on record. Before I consider the submissions made by the learned counsel appearing for the parties, it is necessary to consider the provisions of the Act before and after Maharashtra 17 of 1973, which came into force with effect from 1-2-1973.

13. Sections 13(1)(e) and 15 of the Act, prior to the amendment by Maharashtra 17 of 1973, as on 1-2-1973, read as under:

"13. (1) Notwithstanding anything contained in this Act, a landlord shall be entitled to recover possession of any premises if the Court is satisfied--

(a) to (d).....

(e) that the tenant has, since the coming into operation of this Act, sublet the whole or part of the premises or assigned or transferred in any other manner his interest therein; or"

"15. Notwithstanding anything contained in any law, it shall not be lawful after the coming into operation of this Act for any tenant to sub-let the whole or any part of the premises let to him or to assign or transfer in any other manner his interest therein:

Provided that the Provincial Government may, by notification in the Official Gazette, permit in any area the transfer of interest in premises held under such

leases or class of leases and to such extent as may be specified in the notification."

14. Section 13(1)(e) can be conveniently divided in two parts, namely

(i) that the tenant has since the coming into operation of the Act, sublet the whole or part of the premises, or

(ii) assigned or transferred in any other manner his interest therein.

Perusal of Section 13(1)(e) shows that notwithstanding anything contained in the Act, a landlord shall be entitled to recover possession of any premises if the Court is satisfied that the tenant has, since the coming into operation of the Act, has either sublet the whole or part of the premises, or assigned or transferred in any manner his interest therein.

15. Perusal of Section 15 shows that notwithstanding anything contained in any law, it was not lawful after the coming into operation of the Act for any tenant

(i) to sublet the whole or any part of the premises let to him, or

(ii) assign or transfer in any other manner his interest therein.

16. Sections 13(1)(e) and 15(1) were amended by Maharashtra 17 of 1973. After that amendment Sections 13(1)(e) and 15(1) read as under:

"13.(1) Notwithstanding anything contained in this Act {but subject to {the provisions of Sections 15 and 15A}, a landlord shall be entitled to recover possession of any premises if the Court is satisfied--

(a) to (d).....

(e) that the tenant has, since the coming into operation of this Act, {unlawfully sublet} {or after the date of commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Act, 1973, unlawfully given on licence,} the whole or part of the premises or assigned or transferred in any other manner his interest therein; or"

"15. (1) Notwithstanding anything contained in any law, {but subject to any contract to the contrary}, it shall not be lawful after the coming into operation of this Act for any tenant to sub-let the whole or any part of the premises let to him or to assign or transfer in any other manner his interest therein {and after the date of commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Act, 1973, for any tenant to give on licence the whole or part of such premises}:"

Provided that the State Government may by notification in the Official Gazette, permit in any area the transfer of interest in premises held under such leases or class of leases and to such extent as may be specified in the notification."

Section 13(1)(e) of the Act can conveniently be divided into three parts, namely

- (i) that the tenant has, since the coming into operation of the Act unlawfully sublet the whole or part of the premises, or
- (ii) after the date of commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Act, 1973 unlawfully given on licence the whole or part of the premises,
- (iii) or assigned or transferred in any other manner his interest therein.

Comparison of Section 13(1)(e) before and after the amendment by Maharashtra 17 of 1973 shows that after amendment, the scope of Section 13(1)(e) is enlarged. After the amendment of Section 13(1)(e), the landlord can obtain decree against the tenant on the ground that the tenant after the date of commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Act, 1973 has unlawfully given on licence the whole or part of the premises.

17. Comparison of Section 15 and Section 15(1) before and after the amendment shows that after the amendment the prohibition under the old Section 15 is enlarged. Section 15(1) prohibits any tenant to give on licence the whole or part of the premises after the date of commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Act, 1973.

18. Mr. Jahagirdar relied upon the decisions of the Apex Court in the case of:

- (i) Shalimar Tar Products Ltd. Vs. H.C. Sharma and Others, ,
- (ii) Jagan Nath (Deceased) through Lrs. Vs. Chander Bhan and Others, ,
- (iii) Gopal Saran Vs. Satyanarayana, ,
- (iv) M/s. Delhi Stationers and Printers Vs. Rajendra Kumar, ,
- (v) and decision of this Court in C.C.YI (Dr.), C.C. Yi Vs. Janakidevi Anantlal Gupta and Others,

and submitted that the tenant must part with legal possession of the premises. He submitted that in order to attract Section 13(1)(e) of the Act, the plaintiffs must establish that the defendants are not in legal possession of the suit premises. The plaintiffs must establish that the defendants have parted with possession of specific portion of the suit premises. In other words, the plaintiffs must establish that the defendants have given definite or demarcated portion exclusively on licence. In order to constitute subletting, Mr. Jahagirdar submitted that there must be parting of the legal possession, i.e., possession with the right to include and also right to exclude others. He submitted that mere act of allowing other persons into possession of the tenement and permitting them to use the premises for their own purposes, is not subletting as he retains the legal possession. In order to create a lease or sublease a right of exclusive possession and enjoyment of the property should be conferred on the other.

19. The decisions in Shalimar Tar Products Ltd. Vs. H.C. Sharma and Others, and

Jagan Nath (Deceased) through Lrs. Vs. Chander Bhan and Others, arose out of eviction proceedings initiated under the Delhi Rent Control Act, 1958. In the case of M/s. Shalimar Tar Products Limited (supra), the eviction was sought under Section 14(1)(a) and (b). Section 14(1)(a) deals with the arrears of rent with which we are not concerned. Section 14(1)(b) reads as under:

"14. (1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or Controller in favour of the landlord against a tenant:

Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely:--

(b) that the tenant has, on or after the 9th day of June, 1952, sublet, assigned or otherwise parted with the possession of the whole or any part of the premises without obtaining the consent in writing of the landlord;"

20. Insofar as the decisions of the Apex Court in the case of Gopal Saran Vs. Satyanarayana, and M/s. Delhi Stationers and Printers Vs. Rajendra Kumar, are concerned, the eviction proceedings were initiated under the provisions of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950. The decree was sought under Section 13(1)(e) thereof which reads as under:

"the tenant has assigned or otherwise parted with possession of the whole or any part of the premises without the permission of the landlord"

Thus, the comparison of Section 14(1)(b) of the Delhi Rent Control Act and Section 13(1)(e) of the Rajasthan Premises (Control of Rent and Eviction) Act on one hand and Section 13(1)(e) of the Act after the Maharashtra 17 of 1973 shows that they are not *pari materia*. Section 13(1)(e) was amended by Maharashtra Act 17 of 1973 and an additional category was introduced. Perusal of Section 13(1)(e) read with Section 15(1) as amended by Maharashtra 17 of 1973, therefore, clearly leads to an irresistible conclusion that it is not lawful to any tenant after the date of commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Act 1973 to give on licence the whole or part of such premises.

21. It is also not possible to accept the submission of Mr. Jahagirdar that the licence has to be coupled with interest and that the tenant has to give definite or demarcated portion on licence in view of Section 15A of the Act. Section 15A provides that notwithstanding anything contained elsewhere in the Act or anything contrary in any other law for the time being in force, or in any contract, where any person is on the 1st day of February 1973 in occupation of any premises, or any part thereof which is not less than a room, as a licensee he shall on that date be deemed to have become, for the purpose of this Act, the tenant of the landlord, in respect of the premises or part thereof in his occupation. Thus only those licensees who are in occupation of the premises

which is not less than a room as on 1st day of February 1973 are protected and they deemed to have become the tenant of the landlord. However, similar phraseology is not employed in the amended Sections 13(1)(e) and 15(1) by Maharashtra 17 of 1973. In my opinion, if any tenant after the date of commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Act 1973 which came into force with effect from 1.2.1973, gives on licence the whole or part of the premises, the landlord is entitled to decree under Section 13(1)(e) of the Act.

22. This aspect also can be considered from another angle. Section 52 of the Indian Easements Act, 1882 defines the expression "licence" which reads as under;

"52. Licence - 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."

In P.R. Aiyar's the Law Lexicon, Second Edition 1997, "Licence" has been explained as "A license in respect to real estate is defined to be an authority to do a particular act or series of acts on another's land without possessing any estate therein". The word "licensee" has been explained in Black's Law Dictionary, Sixth Edition to mean a person who has a privilege to enter upon land arising from the permission or consent, express, or implied, of the possessor of land but who goes on the land for his own purpose rather than for any purpose or interest of the possessor. Stroud's Judicial Dictionary of Words and Phrases, Sixth Edition, Vol. 2 provides the meaning of word "licensee" to mean a licensee is a person who has permission to do an act which without such permission would be unlawful. In the case of Prabhudas Damodar Kotecha and Others Vs. Manhabala Jeram Damodar and Another, , the Apex Court has considered Section 52 of the Indian Easements Act, 1882 in paragraph 43 as also the explanation of the term "licence" in P.R. Aiyar's the Law Lexicon, Black's Law Dictionary and Stroud's Judicial Dictionary of Words and Phrases.

23. In the light of the aforesaid discussion, I do not find any merit in the submission of Mr. Jahagirdar that the licence has to be coupled with interest. I am of the opinion that if after the date of commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Act, 1973 which came into force with effect from 1-2-1973, if any tenant gives on licence the whole or any part of the premises, it being an actionable claim, the landlord is entitled to a decree under Section 13(1)(e) of the Act. Having regard to the language employed in Section 14(1)(b) of the Delhi Rent Control Act and Section 13(1)(e) of the Rajasthan Premises (Control of Rent and Eviction) Act as compared with the amended Section 13(1)(e) of the Act, reliance placed by Mr. Jahagirdar on the decisions of the Apex Court in Shalimar Tar Products Ltd. Vs. H.C. Sharma and Others, , Jagan Nath (Deceased) through Lrs. Vs. Chander Bhan and

Others, , Gopal Saran Vs. Satyanarayana, , M/s. Delhi Stationers and Printers Vs. Rajendra Kumar, does not advance the case of the applicants.

24. Insofar as the decision of this Court in the case of C.C.YI (Dr.), Medical Practitioner, Bhiwandi (supra) is concerned, the learned single Judge of this Court considered the decisions of the Apex Court in the cases of Shalimar Tar Products Ltd. Vs. H.C. Sharma and Others, Jagan Nath (Deceased) through Lrs. Vs. Chander Bhan and Others, , and Gopal Saran Vs. Satyanarayana, , and after considering the law laid down by the Apex Court in the cases of J.K. Iron and Steel Co. Ltd., Kanpur Vs. The Iron and Steel Mazdoor Union, Kanpur, as also Shankar Chakravarti Vs. Britannia Biscuit Co. Ltd. and Another, , observed in paragraph 37 that the plaint pleadings were absolutely deficient to bring home the case of the plaintiff within the scope of Section 13(1)(e) of the Act. There was absolutely no evidence on record to prove the ingredients of subletting or the parameters of subletting laid down by the Apex Court. What is contemplated under Section 13(1)(e) is giving of the whole or part of the premises on licence or assignment or transfer of interest of the tenant therein. In fact, in paragraph 33 of that report, the learned single Judge observed that so far as the ground of unlawful subletting is concerned, the word sublet is of wider amplitude and takes in the letting even to licensees or their occupation at the instance of the tenant either for some consideration like rent or premium and if such induction is without the written permission of the landlord, the requirements of Section 13(1)(e) of the Act will be fully answered. I am, therefore, of the opinion that the decision in the case of C.C.YI (Dr.), C.C. Yi Vs. Janakidevi Anantlal Gupta and Others, rather than supporting the applicants, supports the case of the respondents.

25. Apart from above, the learned single Judge of this Court in the case of Dattatraya Kaluram Jadhav v. Narayandas Badridas Rathi, AIR 1974 Bombay 189, while considering Section 13(3)(iii) of the C.P. and Berar Letting of Houses and Rent Control Order, 1949 observed that the word "sub-let" is of wider amplitude and takes in the letting even to licensees or their occupation at the instance of the tenant either for some consideration like rent or premium and if such induction is without the written permission of the landlord, the requirements of sub-clause (3)(iii) will be fully answered. Section 13(3)(iii) of the C.P. and Berar Letting of Houses and Rent Control Order, 1949 reads as under.

"13(3) If after hearing the parties the Controller is satisfied--

(i) xxx xxx

(ii) xxx xxx

(iii) that the tenant has without the written permission of the landlord sublet the entire premises or any portion thereof; or"

26. The view taken by me is supported by the decisions of the Apex Court in the case of Chandavarkar Sita Ratna Rao Vs. Ashalata S. Guram, and Board of

Trustees of the Port of Mumbai Vs. Byramjee Jeejeebhoy Pvt. Ltd. and Another, . In the case of Chandavarkar Sita Ratna Rao (supra), the Apex Court observed in paragraph 37 as under:

37. Section 108 of The Transfer of Property Act, 1882 deals with the rights and liabilities of both the lessor and the lessee. Clause (j) of Section 108 gives the lessee the right to transfer absolutely or by way of mortgage or sub-lease the whole or any part of his interest in the property, and any transferee of such interest or part may again transfer it. The lessee shall not, by reason only of such transfer, cease to be subject to any of the liabilities attaching to the lease. Further it stipulates that nothing in this clause shall be deemed to authorise a tenant having an un-transferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate under the management of a Court of Wards, to assign his interest as such tenant, farmer or lessee. So therefore the prohibition is there on a tenant having an un-transferable right of occupancy to transfer his interest. We are here, not concerned with the transfer of the interest but rather with the granting of licence which is personal in nature. It is indisputable that the grant of licence does not entail transfer of interest. See B.M. Lall (Dead) by Lrs. Vs. Dunlop Rubber and Co. Ltd. and Others, . The Indian Easements Act 1882 deals with licenses. Section 52 of Chapter VI of the said Act defines license as when 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, such right is called a license."

(Emphasis supplied)

In the case of Board of Trustees of the Port of Mumbai (supra), the Apex Court considered the provisions of Sections 13, 14, 15 and 15A of the Act. It was observed in paragraphs 17 to 19 as under;

"17. It is important to clearly understand the interplay between Sections 13(1) (e) and Section 15 of the Act. Section 13(1)(e) provided that any unlawful sub-letting by the tenant since January 19, 1948, the date of coming into operation of the Act or after February 1, 1973, the date of commencement of the Amendment Act (Maharashtra Act 17 of 1973) any licence given by the tenant unlawfully or any unlawful assignment or transfer of his interest in any other manner in the whole or part of the demised premises would make the tenant liable to eviction.

18. Section 15, in sub-section (1) then laid down what would make the sub-letting, assignment, transfer or licence unlawful. It said that any sub-letting or assignment or transfer of his interest in any manner made by the tenant after January 19, 1948 or any licence given by him after February 1, 1973 for the whole or part of the premises, unless sanctioned by the contract, would not be

lawful, notwithstanding anything contained in any law. Section 15(1), thus, took away any protection given to the tenant by any other law, e.g., Section 108(j) of the Transfer of Property Act and prohibited him from any sub-letting or licensing or assignment or transfer of his interest in any other manner in the absence of a sanctioning provision in the contract unless, of course, the demised premises came under the proviso to Section 15(1). But it is no one's case here that the proviso to Section 15(1) has any application to the present suit land. In light of Section 15(1), so much emphasis put on behalf of the plaintiff on Clause 4 of the lease deed dated May 10, 1886 would appear to be rather out of place because even without Clause 4, in the absence of a sanctioning clause in the lease the subletting by the tenant would not be lawful and would come within the mischief of Section 13(1)(e).

19. But then came Section 15(2) that removed the "unlawful" tag from any sub-letting, assignment, transfer of interest in any other manner or licensing, though contrary to sub-section (1), that were made before the 1st day of February, 1973. The second part of Section 15(2) laid down that regardless of the prohibition in sub-section (1) and notwithstanding anything contained in any contract or in the judgment, decree or order of a court a sub-lease, assignment or transfer of interest in any other manner shall be deemed to be valid if the person in whose favour transfer is made entered into possession of the demised property and continued to be in possession on February 1, 1973. It needs to be emphasised here that the second part of Section 15(2) overruled a contract by saying at the beginning, "Notwithstanding any thing contained in any contract...". This means that Clause 4 of the lease deed would be ineffective and inoperative if the sublease made by Defendant No. 1 in favour of Defendant No. 2 otherwise conformed to the conditions laid down in Section 15(2) of Bombay Rent Act. More importantly, Section 15(1) further provided that any subletting, assignment or transfer of interest in any other manner made by the tenant that came within its protective ambit would save him from eviction under Section 13(1)(e). To sum up, any subletting, assignment, transfer of interest in any other manner or licensing made by the tenant after February 1, 1973 without there being any sanctioning clause in the contract or without the express consent of the landlord would constitute a ground for eviction under Section 13(1)(e) of the Act."

27. In view of the aforesaid discussion, I do not find any merit in the submission of Mr. Jahagirdar that the Appellate Court committed error in decreeing the suit under Section 13(1)(e) of the Act.

28. Perusal of cross-examination of the defendants' witness Mr. Maqbool Hasan Khan shows that the defendants used to collect charges from the persons who were running the Art Gallery from the suit premises for selling their articles. The charges were recovered on the percentage of the sale of articles. The W.I.T. used to issue their own cash memos to their customers in respect of the goods sold from the suit premises. The defendants were also recovering the service charges

from the persons to whom the premises were given. He further admitted that whenever the premises were given to the persons for sale of their articles, it was for a certain period. DW-1 further admitted that he does not have counter foils of the cash memos of the defendants' business for the articles sold from the suit premises by the W.I.T. He further admitted that the defendants have given the suit premises to others to sell their articles from the suit premises, during the period the W.I.T. was not selling their articles from the suit premises. He further admitted that there is no manager or cashier employed by the defendants and that he has not produced any documents to show that the suit premises are being used by the defendants because he did not feel it necessary.

29. Having regard to the admissions given by the witness of the defendants, Clause 2(o) of the lease as also after considering the findings recorded by the Appellate Court, I do not find any merit in the submission of Mr. Jahagirdar that the defendants were carrying on business exclusively to the exclusion of others. In para 24 the Appellate Court, after appreciating the evidence on record, recorded a categorical finding that the plaintiffs have proved that the defendants have contravened Clause 2(o) of the Lease Deed by parting with possession of the suit premises to the W.I.T. and others. I do not find that the Appellate Court committed any error in arriving at that conclusion.

30. In view of the foregoing discussion, the application fails and is dismissed. Rule is discharged with no order as to costs.

31. At this stage, Mr. Jahagirdar orally applies for continuation of the statement recorded in the order dated 26-8-2013 for a period of 12 weeks from today. He states that, the applicants will file usual undertaking in this Court within three weeks from today, after giving advance copy to the other side, incorporating therein:

(i) that they are in possession of the suit premises and nobody else is in possession;

(ii) that they have neither created any third party interests nor parted with possession;

(iii) that they will hereafter neither create third party interests nor part with possession;

(iv) that they will go on regularly paying the rent until further orders;

(v) that they will not apply for further extension of time;

(vi) that in case they are unable to obtain suitable orders from the higher Court within 12 weeks from today, they will handover vacant and peaceful possession to the respondents within 12 weeks from today.

32. Subject to the applicants filing usual undertaking in the aforesaid terms within three weeks from today, after giving advance copy to the other side, the statement made by the respondents and as recorded in the order dated

26-8-2013 shall remain in force for a period of 12 weeks from today. It is made clear that in case the applicants do not file usual undertaking within three weeks from today and/or commit breach of any of the conditions of the undertaking, the respondents would be at liberty to proceed in the matter in accordance with law. Order accordingly.