

(1958) 11 BOM CK 0033

In the Bombay High Court

Case No : Civil Revision Application No. 886 of 1958

M.F. De Souza

APPELLANT

Vs

Childrens Education Uplift Society

RESPONDENT

Date of Decision : 17-11-1958

Acts Referred:

Easements Act, 1882 — Section 60

Citation : AIR 1959 Bom 533 : (1959) 61 BOMLR 750 : (1959) ILR (Bom) 1127 : (1960) NLJ 50

Hon'ble Judges : Mudholkar, J

Bench : Single Bench

Advocate : Party in person, for the Appellant; R. Jethmalani and B.K. Hirani, for the Respondent

Judgement

Mudholkar, J.—This is a defendant's application for revision of a judgment of the Presidency Small Cause Court, Bombay, decreeing the plaintiff's suit for possession of a portion of a room which is in the occupation of the defendant as a licensee by virtue of a compromise decree passed in the previous litigation between the parties by this Court. Now, one of the terms of the consent decree is that the defendant will be entitled to occupy the aforesaid portion of the room as a licensee and that the licence in her favour would be irrevocable. The plaintiff, which is an educational society, contends that it is entitled to revoke the license because the defendant has not been paying any compensation to the plaintiff for the use and occupation of the portion of the room in her possession as a licensee. The defendant contended that the consent decree made no reference whatsoever to the payment made no reference whatsoever to the payment of rent or compensation to the plaintiff, and that, therefore, she was not liable. She further stated that while she was a licensee in respect of the entire room, she used to pay Rs. 15/- per month as rent to the plaintiff, and now that she is in possession of only one-third the portion, she is liable to pay only Rs. 5/- per month. She has further stated that she has tendered rent or compensation to the plaintiff at the rate of Rs. 5/- per month, but that the plaintiff has refused to

accept it and therefore, according to her, she has committed no breach whatsoever of the terms of the licence.

2. On behalf of the plaintiff it is contended before me that a licence must always be regarded as revocable at the will of the licensor except in the two cases set out in Section 60 of the Easements Act. Section 60 reads thus:

"License may be revoked by the grantor, unless-

(a) it is coupled with a transfer of property and such transfer is in force;

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

The learned Counsel for the plaintiff points out that there is no mention here of a third class of cases wherein a licence would be irrevocable, that is, cases where parties have agreed that it shall be irrevocable. In my opinion, the argument advanced by the learned Counsel is not sound. It is no doubt true that Section 60 mentions only two classes of cases in which the licence could be regarded as irrevocable. This means that where a case falls in either of these categories the licence is made irrevocable by operation of law, that is the Easements Act. But apart from the Easements Act, there is the law of contract, and if parties enter into a contract and arrive at a solemn agreement to the effect that the licence shall be irrevocable or shall be limited for a particular duration, it follows that the licensor will be bound by his engagement and will not be entitled to terminate the licence or revoke the licence at his sweet will and pleasure. If authority were necessary for this proposition, I may refer to the following passage in *Corpus Juris Secundum*, Vol. LIII, pp. 815-16 :

"As a general rule a mere license, that is, one which is merely a personal privilege not coupled with an interest in the land, may be revoked by the licensor at any time, at his pleasure. This rule generally applies regardless of how long the use has been permitted, and although the intention was to confer a continuing right, and even though the license was created by a deed or other written instrument. The general rule, however, is not without its modifications and exceptions, and does not apply where the license is coupled with or partakes of the character of an easement and the rights under it are affirmatively and definitely fixed and settled, or where it constitutes part of a contract between the parties....."

Now, here the consent decree to which I have referred earlier was passed in an appeal which the plaintiff had brought to this Court from the dismissal of its suit for possession of the very room a portion of which is in the defendant's occupation. The plaintiff, which had lost its suit in the first Court, agreed to allow the defendant to be in exclusive possession of one-third portion of that room, and further agreed that her right as a licensee to occupy the room will be irrevocable so long as the Bombay Rent Act remains in force. Now, it is clear that the plaintiff, which had lost earlier in the City Civil Court, wanted to rescue

something out of its original claim and therefore it entered into the aforesaid compromise. The consideration for the compromise was apparently the defendant's parting with her right to the use of two-thirds of the room, because as a result of the compromise she became entitled to use only one-third of the room. The plaintiff having thus received consideration for the compromise, cannot in equity and in all fairness be allowed to go back upon it. Therefore, I am of opinion that, quite apart from Section 60 of the Easements Act, the Court will have to bear in mind in a suit of this nature whether the licensor is precluded from revoking the licence because of any contractual engagement into which he has entered. There being an engagement of this kind here, I am of the opinion that the plaintiff cannot claim to itself the right of revocation at its free will and pleasure. To hold otherwise and to decree possession in such circumstances would be nothing else than putting the Seal of approval of the Court to a breach of contract.

3. Then it was contended that the learned Judge of the Court below has found that the defendant has not been paying any compensation to the plaintiff for her occupation of the 1/3rd portion of the room and has therefore committed a breach of a term of the licence. Because of the breach of the term, the plaintiff says that it is entitled to revoke the licence. Now, if we scan the terms of the consent decree passed in the preliminary suit, we find that there is no reference whatsoever to the right of occupation being conditioned by the liability to pay compensation. The learned Counsel for the plaintiff, however, says that this must be implied in the agreement between the parties. He further points out that, even according to the defendant herself, she was not occupying the room or using it without paying rent, and that when she was examined before the Court below she has admitted that she did not expect to use the room gratis and that she was liable to pay the proportionate amount of rent; i.e. Rs. 5/-. From this he wants me to conclude that one of the conditions of the licence was the payment of compensation by the defendant to the plaintiff. All that we have is the plaintiff's statement in the "Cause of Action" to the effect that the defendant neglected to pay "the licence charges at the rate of Rs. 15/- per month." There is no averment there, or even in the evidence of Dharamdas who was examined on behalf of the plaintiff, to the effect that the payment of Rs. 15/- per month was a condition for the occupation of one-third of the room. Now, since the plaintiff has failed to establish that the payment of Rs. 15/- per month was a condition of the licence, it is not open to it to say that it is entitled to revoke the licence because the defendant has not been paying compensation at the aforesaid rate.

4. That being the position, I am of the opinion that the learned Judge of the Small Cause Court acted erroneously in the exercise of his jurisdiction in passing a decree in favour of the plaintiff. Accordingly, I allow the application in revision and make the Rule absolute with costs.

5. Revision allowed.