

(2005) 05 KAR CK 0017
In the Karnataka High Court
Case No : Regular First Appeal No. 77 of 2005

Skylines Advertising (P) Ltd.

APPELLANT

Vs

National Airport Authority and Another

RESPONDENT

Date of Decision : 23-05-2005

Acts Referred:

Easements Act, 1882 — Section 52, 60, 60 (b), 63
Evidence Act, 1872 — Section 91, 92

Citation : (2005) ILR (Kar) 4397 : (2005) 6 KarLJ 196 : (2005) 4 KCCR 341
SN : (2005) 3 RCR(Civil) 571 : (2005) 2 RCR(Rent) 181

Hon'ble Judges : Manjula Chellur, J

Bench : Single Bench

Advocate : Holla and Holla and Nandish Patel, for the Appellant; K.G. Raghavan, Arun Kumar, G.N. Hegde, R.Y. Hadagali, Dhyanchinnappa, Rajeev Kadambi and Dua Assts., for the Respondent

Final Decision : Dismissed

Judgement

Manjula Chellur, J.—The appellant herein is one of the plaintiffs who lost their suit filed for declaration and permanent injunction.

2. The facts that led to the filing of the appeal in brief are as under:

The second appellant is the company and the first appellant is the Chairman and Managing Director of the second appellant's company. They carry on the business of out door advertising. The respondents agreed and permitted the plaintiffs to erect a permanent VIP Welcome Arch made of concrete and steel at the entrance of the Bangalore Aerodrome opposite to HAL Park. They were further permitted to display advertisements on the same. The agreement came into existence from 21.4.1990. Under the said agreement, the appellant/plaintiffs were given permission / licence to construct and erect a VIP Welcome Arch of permanent nature at their own cost.

3. It was agreed between the parties a sum of Rs. 2100/- per sq. mtr. per year

would be the licence fee initially for the first three years and thereafter at an enhanced rate of 30% over and above the agreed rate for the next three years and subsequently to pay an additional increase of licence fee at the rate of 10% per annum every year permanently. Therefore, according to the plaintiffs, the above said clauses indicate or establish the nature of licence granted to them as permanent one and irrevocable.

4. As per the terms of the contract, the appellant have spent over Rs. 4 lakhs towards the cost of permanent construction of the said structure, which is made up of concrete and steel. Ever since, then they are using the same for the purpose of display of advertisements as agreed between the parties. The monthly licence fee is regularly paid by the appellant without any default.

5. It is further contended by the appellant / plaintiffs having regard to the amount spent towards the construction of permanent Arch, the plaintiffs were entitled to use the said Arch for advertisement purpose permanently subject to payment of licence fee at an enhanced rate of 10% per annum every year. Because of its permanent nature only, the agreement stipulated enhancement of licence fee at different intervals as stated above.

6. The initial period of 3 years ended by August 1993 and from August 1993 onwards, 30% increase was made in the licence fee, which is being paid accordingly. The respondents/defendants accepted the same without any demur. This further indicates that the agreement is valid and subsisting in all respects.

7. During February 1994 the licence fee remitted by the appellant was returned by the defendants on the ground that they intended to go in for a single agency. In other words, the respondents intention was not to permit the appellant to display advertisements on the permanent structure put up by them. The respondents have no right whatsoever to prevent or obstruct the appellant from displaying the advertisements in view of the terms and conditions of the agreement dt. 21.4.1990. Even otherwise, it is contrary to the Easement Act. The appellant has a right to use the Arch for the advertisement permanently. There is implied renewal of the licence with the mere acceptance of increased licence fee.

8. The respondents floated a tender bearing Sl. No. BG 12 and called for sealed tenders from advertisements for the display of outdoor and indoor advertisements in respect of Bangalore Airport. One of the places referred to in the said tender was the VIP Welcome Arch, which is put up by the appellant. This action on the part of the respondents definitely implies that the defendants are contemplating termination of the licence of the appellant, which is illegal. It is nothing but unilateral repudiation of the contract. As the licence given in favour of the appellant being irrevocable licence, under law, the respondents have no authority whatsoever to revoke the same. The appellant has spent huge sums for the construction of the permanent VIP Welcome Arch, which is a permanent structure.

9. The officials of the respondents Airport authorities orally instructed the appellant/plaintiffs not to display the advertisements on the VIP Welcome Arch with effect from 30.6.1994 without any Notice in accordance with law. They even went to the extent of threatening to remove the advertisements if any displayed by them subsequent to 30.6.1994. Therefore, according to the appellant / plaintiffs, they had to file the suit for declaration declaring the agreement is valid and binding on the respondents and consequential relief of restraining the respondents not to interfere with the right of the appellant to display the advertisements on the VIP Welcome Arch.

10. The respondents / defendants inter alia appeared and filed the written statement contending that the suit was not maintainable for declaration and injunction as sought for, and it is outside the purview and ambit of Specific Reliefs Act. For the purpose of carrying on various activities of the first defendant airport authority, they are authorised to charge fees or rent from the persons who are given any facility for carrying on any trade or business at any Aerodrome. Under the provisions of the National Airports Authority Act 1985, the respondents are required to augment its sources for the purpose of discharging its functions efficiently. One of the sources of revenue was by way of collecting licence fee from advertisements and other Companies who take the facilities at the Airport to use the space and facilities provided in the aerodrome. There is no provision of providing any irrevocable or permanent licence. The respondents cannot work beyond the framework of the Act.

11. The respondents admit executing or entering into an agreement with the appellant / plaintiffs, but according to the terms of the agreement dt. 21.4.90, irrespective of the duration specified in the agreement, the agreement could be terminated in writing by given three months notice by any of the parties at any time. This term in the agreement would make it clear at no point of time it was understood between the parties that the agreement is irrevocable. They further took up the contention that they evolved a scheme envisaging the grant of advertising rights to a sole agency and accordingly, tenders were invited. A letter was also addressed to the plaintiffs in this regard. The various terms and conditions in the agreement would disclose that the agreement is terminable at the pleasure of either of the parties on issuing a requisite notice as provided in the agreement. They further call upon the appellant to establish that they had spent huge amount of Rs. 4 lakhs and the said figure is exaggerated. The structure or the arrangement with regard to the licence fee and the enhancements subsequently does not in any manner refer to nature of permanency. If the entire agreement is taken into consideration, it would indicate that the agreement is not a permanent one and is liable for termination. The action of the defendants in refusing to receive the rents is very much within the purview of the terms and conditions of the agreement. As long as the Agreement dt. 21.4.90 subsists the appellant have right to use the Arch for the purpose of advertisements, but it is not irrevocable licence.

12. The action of the respondents in calling for tenders is well within the legal ambit. In this regard, a communication dt. 24.6.1994 was issued to all the advertisers operating at the Bangalore Airport informing that with effect from 30.6.1994 they should stop advertising and make arrangement to remove the advertising materials. The allegation of the plaintiffs that no such intimation was sent to them is denied by the defendants.

13. Based on the above pleadings, the following issues were framed.

1. Does plaintiffs prove that the licence under Agreement dated 21.4.90, granted by defendants is irrevocable licence?

2. Does plaintiffs prove that he is entitled to display advertisement without hindrance of defendants?

3. Does plaintiffs prove defendants interference as per para 14 of the plaint?

4. Whether there is cause of action to suit?

5. Whether plaintiff is entitled for suit reliefs?

6. If so, under what order of Decree?

14. On behalf of the plaintiffs, two witnesses are examined as P. W1 and P. W.2 and got marked 15 documents as Ex. P1 to Ex.p. 15. On behalf of the respondents, D.W. 1 and D. W.2 were examined and 7 documents were marked as Ex.D. 1 to Ex.D.7.

15. The learned trial Judge, on appreciating the oral and documentary evidence dismissed the suit with costs. Aggrieved by the said Judgment and decree, the present suit is filed.

16. Though an issue came to be framed as additional issue with regard to valuation of the suit and the proper Court fee being paid, both the parties to the appeal did not make any submissions regarding the said issue. Therefore, this Court is not inclined to look into the issue of Court fee. Only the other issues will be dealt with.

17. According to the learned Counsel for the parties, irrespective of the terms of the Contract, Section 60(b) of the Easement Act deserves to be looked into in order to decide the real question of controversy between the parties i.e., whether the licence is irrevocable or not?

18. According to the learned Counsel, the very nature of the construction put up by the appellant being a permanent one and the expenditure incurred by the appellant would satisfy all the conditions enumerated u/s 60(b) of the Easement Act. Therefore, the same implies that the licence granted in favour of the appellant was permanent and the irrevocable. He also brought to the notice of the Court the cross-examination of D.W. 2 and several clauses of Agreement, i.e., the words used like determination or termination of lease the documents i.e., at Ex.D. 1.

19. According to the appellant Counsel, Section 60(b) of the Easement Act does not permit the parties to contract to the contrary. Therefore, according to him, though Clauses 6 and 10 of Ex.D 1 refers to revocation or determination of lease, these clauses being in conflict with the earlier clauses indicating permanent nature of licence, the earlier clauses would prevail upon the later clauses. He also brought to the notice the evidence of D.W.2 with regard to his admission in respect of permanent nature of structure and so also the money spent by the appellant for the said construction. According to the learned Counsel, the clauses which refers to enhancement of 10% of rent every year and the word permanently would refer to the tenure of the licence and not the licence fee. The following decision in support of his case are relied upon.

Radha Sundar Dutta Vs. Mohd. Jahadur Rahim and Others,

M.M.B. catholics v. Paulo avira Sahebzada AIR 1959 SC 31

Sahebzada Mohammad Kamgar Shah Vs. Jagdish Chandra Deo Dhabal Deo and Others,

Ramanlal Mohanlal Pandya Vs. The State of Bombay,

Parvinder Singh Vs. Renu Gautam and Others,

Roop Kumar Vs. Mohan Thedani,

John Vallamattom and Another Vs. Union of India (UOI),

Raj Kumar Rajinder Singh v. State of Himachal Pradesh and Ors. (1990)4 SC 320

Suryakumar Govindjee Vs. Krishnammal and Others,

20. The learned Senior Counsel for the appellant submits though there are certain clauses which refers to determination or revocation of licence ultimately the agreement between the parties orally entered into would refer to the irrevocable nature of grant given by the respondents in favour of the appellant. According to the learned Counsel, even if there is written contract, oral evidence is permissible in respect of nature of documents.

21. As against this, the learned Counsel for the respondents submits there cannot be any argument regarding the oral agreement in respect of nature of the grant or the licence, as there is no pleading. Unless and until foundation is laid down by way of pleadings such plea cannot be taken up. The very word "expiration" or "determination" referred to in the different clauses of Ex. D1 does not indicate any grant of licence of permanent nature. According to him ultimately what the Court has to see is whether there can be a contract to Section 60(b) of the Easement Act. Therefore firstly, the Court has to see whether any right has accrued to the appellant in terms of Section 60(b) of the Easements Act? If so, whether there can be contract to contrary to the Section 60(b) of the Easement Act. According to him, even if conditions u/s 60(b) are available to the appellant still the contract can be irrevocable by agreement

between the parties. Therefore, Section 60(b) is not sacrosanct. The word every year permanently is not with reference to the tenure of the grant, but it is only with regard to the quantum of licence fee. Therefore, all the terms and conditions especially with regard to the licence fee and enhancement from time to time have to be read together and not individually. He further contends that the respondents/defendants are dealing with the public property, therefore, private right must yield to public right. In other words, the rights of the appellant herein must yield to the right of the public i.e., interest of the public in airport properties. He also brought to the notice of the Court Section 60(b) of the Easement Act. According to the learned Counsel, the evidence let in by the plaintiffs / appellant does not even bring their case u/s 60(b) of the Act as in spite of accepting and admitting that they have audited accounts, they have not produced any accounts. Therefore, there is no proof with regard to the expenditure spent for the construction of arch of permanent nature.

22. He also relies upon the following decisions.

Roop Kumar v. Mohan Thedani (Supra)

Ramdip Sharma and Others Vs. Baldeo Singh,

Jhon Vallamattom and Anr..v. Union of India (Supra)

C.M. Beena and Another Vs. P.N. Ramachandra Rao,

Koppula Venkat Rao Vs. State of Andhra Pradesh,

Ram Sarup Gupta (Dead) by Lrs. Vs. Bishun Narain Inter College and Others,

Annathu Sarojini and Others Vs. Muhammed Sainulabdeen and Others,

R.K. Kesavan Vs. Board of Revenue, Trivandrum and Others,

Joint Director of Mines Safety Vs. Tandur and Nayandgi Stone Quarries (P) Ltd.,

23. The entire dispute between the parties is with reference to nature of the licence granted to the appellant by the respondent i.e., whether it is revocable licence or not? Both the parties placed reliance on Ex.D1, dt. 2.4.1990. According to the appellants, as it involved spending enormous amount towards the construction of VIP Welcome Arch, it was agreed between the parties that the appellants would be entitled to use the said arch for advertisement purpose permanently. It is pertinent to refer to the relevant clauses at Ex.D1 as contended by both the parties.

24. The learned Counsel for the appellants relies upon the following contents of Ex.D1 Agreement of licence in support of his case.

a. Whereas the authorities has agreed to permit the licence to use the space/site for display of advertisement on the permanent VIP Welcome Arch erected by them, at their cost at Bangalore Aerodrome fully described in the schedule hereunder (hereinafter referred to as "the said space / site) strictly on licence

basis upon the terms and conditions hereinafter appearing.

b. That the licensee shall pay the licence fee at Rs. 2100/-per sq. m per year for the first three years and after three years, the licence fee will be paid at the enhanced rate of 30% for next three consecutive years and thereafter an additional 10% per annum will be paid every year permanently without fail for the advertisement area covering 2/3rds of the span working out to 32.99 sq. mtrs. for which the payment at Rs. 2100/- per sq. mtr totally amounting to Rs. 69,293 per year is being paid in terms of their letter No. 1274/90-91 dated 16th April, 1990.

25. The learned Counsel for the respondents relies upon the following terms and conditions.

a. In consideration of the licence fee hereby agreed, and of the covenants on the part of the licensee hereinafter contained, the authority both hereby permit the licensee to use the said space for a period of three years with effect from 1.6.1990.

b. On the expiration or earlier determination of the terms of the licence, the Authority shall return the security deposit or part thereof which has not been forfeited as aforesaid to the licence without interest.

c. The authority will have full discretion to direct the shifting of the location of the advertisement / hoarding to another location in the Terminal Building or outside as may be applicable during the period of the licence to meet the requirements of the Authority and the licence shall in such event shift the said Advertisement / hoarding within one month from the date of notice failing which the Authority shall have right to get it shifted at the cost and risk of the licensee.

d. The licence shall, without, prejudice to other rights and remedies of the Authority be subject to termination.

i. by fifteen days notice in writing given by the Authority at any time in the event of any breach by the licensee of any of the terms and conditions of this licence, or

ii. by 3 months notice in writing given at any time by either of the party without assigning any reason.

Notwithstanding the termination of this licence in term of Sub-clause (i) or (ii), the licensee shall not be entitled to claim any refund of licence fee or any other payment, or any part thereof from the authority provided when a 3 months notice is given by the Authority under Sub-clause (ii), the licensee shall be entitled to refund of licence fee for the un-expire period of licence.

e. If and whenever any part of the licence fee agreed or charges shall be in arrears or unpaid for 14 days after the date on which the same shall have become due, whether the same shall be demanded or not, or if there shall have been, in the opinion of the Chairman (which shall be final and binding) any breach on the part of the licensee determine this licence and the licensee shall

upon such determination peacefully handover vacant possession of the space / site without any right to compensation of whatsoever and thereupon this agreement shall absolutely determine without prejudice to any right of action or remedy of the Authority in respect of any antecedents breach of terms and conditions or covenants by the licensee.

On the expiry of the licence period, the licensee shall promptly take action to remove the Advertisement / hoarding from the site and in the event of the licensee not removing the advertisement after the expiry of the licence period or when the licence is terminated for any reason during the tenure of the licence for breach of terms and conditions or otherwise, the Authority will be at liberty to remove the display and dispose of the materials and adjust their sale proceeds against the expenditure incurred by the Authority and in case of any shortfall, the Authority shall be at liberty to recover the same from the Licensee.

26. Now coming to Section 60(b) of the Indian Easements Act, it reads as under:

"Section. 60: Licence when revocable-A licence may be revoked by grantor, unless-

- a) It is coupled with a transfer of property and such transfer is in force
- b) the licensee, acting upon the licence, has executed a work of a permanent character and incurred expenses in the execution."

27. P.W.1, and 2 have disposed on behalf of the plaintiffs. It could be gathered from their evidence that, they have spent more than Rs. 4 lakhs for the construction of the arch at the entrance of the airport in pursuance of Ex.D.1 agreement. It is not in dispute that the licence fee is paid up to date i.e., on the date filing of the suit. The tenders were called by the respondent authority for indoor and outdoor display advertisement including the permanent VIP welcome arch. The material used for construction of the arch was concrete and steel. This bit of evidence is not denied by the respondents. Somewhere in 1990 or 1991 this construction must have taken place. The photographs produced before the Court reveals two pillars, and a hoarding is displayed on the pillars. For this, the cost of construction according to the appellants was Rs. 4 lakhs. Though the appellant admit in their evidence that they have all the accounts audited disclosing the expenditure of Rs. 4 lakhs for the construction of permanent welcome arch, none of them are before the Court. As a matter of fact, they have not even produced the details of expenditure incurred by them for the construction of the arch. No doubt, certain amount must have been spent for the construction of the arch. But in order to believe the contention of the appellant that the agreement was agreed to be treated as permanent licence in view of enormous amount being spent for putting up the arch, the Court expects the appellants to establish the said fact. This is so far as factual fact is concerned. Section 60(b) of the Easements Act says a licence may be revoked by the grantor, unless the licensee in terms of the licence has set up a construction of permanent nature and has incurred expenditure for such construction. The

normal or general rule is licence could be revoked by the grantor unless the exception to Section 60(b) is in existence. The question would be whether there could be contract to the contrary to Section 60(b) of the Easements Act.

28. According to the learned Counsel for the appellants the terms of the contracts referred to above coupled with the fact of putting up construction of permanent nature at the expense of licensee the licence has become a irrevocable licence.

29. According to the learned Counsel for the respondent the terms and conditions relied on by them as stated above would indicate that a contract was entered into between the parties where the grantor of licence has an authority to terminate or determine the licence. According to him factually, even the expenses spent is not established by the appellant.

30. The decisions relied upon by the learned Counsel for the appellant are:

1. Biswanath Ghosh Vs. State of West Bengal and Others,
2. Babu Fazal Haq and Others Vs. Lala Data Ram and Another,
3. Gopalan Nair Vs. Thevi Amma Thankamma and Another,
4. M.F. De Souza Vs. Childrens Education Uplift Society,
5. 1967 (1) MYS.L.J.203

They refer to the law when a licence becomes irrevocable. The gist of the above cases is whenever a licence of irrevocable nature is pleaded, the party who pleads so, has to establish that the work of permanent nature was executed acting upon the licence granted and expenses are incurred. Whenever such fact is established or where there is solemn agreement between the parties that the licence shall be irrevocable, the grantor is bound by such agreement and he cannot terminate the licence.

31. In the entire agreement of licence nowhere it indicates or refers to the nature of the licence as irrevocable one. On the other hand, the two terms and conditions referred by the learned Counsel for the appellant indicate or uses the word "permanent VIP welcome arch" with reference to the use of the space and again with reference to payment of licence fee it refers to the word permanency i.e., every year pennanently. Relying on these words, the learned Counsel submits the licence is that of permanent nature and cannot be revoked. In the first instance the said work is with reference to nature of VIP welcome arch to be erected by the licensee and the second instance refers to additional 10% enhancement of licence fee per annum every year. In other words it says for the first three years the licence fee is at Rs. 2100/- and thereafter, for next three consecutive years it shall be enhanced at the rate of 30% and thereafter as long as the licence is in force or in existence the licence fee is payable at additional 10% per annum. At any stretch of imagination, this does not refer to nature or duration or term of licence and it rather refers to payment of licence fee after

first 6 years till the licence is in existence with an additional licence fee at 10% every year. In other words the grantor or licensor cannot ask for more than 10% enhancement of licence fee every year after 6 years period from the date of commencement of licence.

32. On the contrary as pointed out by the learned Counsel for the respondent, the terms and conditions as enumerated above would refer to expiration or determination of terms of licence. It also refers to full discretion of the grantor to direct the licensee to shift the location of the advertisement, hoarding in the terminal building or outside. In the event of failure of the licensee to shift within one month from the date of notice, the respondent authority has the right to get it shifted at the cost and risk of the licensee.

33. Clause 10 refers to termination of lease under two circumstances. The first one refers to termination of licence by giving 15 days notice in writing in the event of breach of terms and conditions of the licence by the licensee. Clause 10(2) refers to termination of licence at any time by either of the party without assigning any reasons by giving 3 months notice in writing. This indicates that both the parties to the agreement had option to terminate the licence without assigning any reasons and the only condition is to give 3 months notice in writing.

34. Clause 14 refers to the right of the grantor or licensor to determine the licence in the event of licensee failing to pay the arrears for 14 days after the date on which such charges or arrears remained unpaid.

35. Clause 19 refers to the liabilities of the licensee on the expiry of the licence period. It attaches an obligation against the licensee to remove the advertisement hoarding on the expiry of the licence period or when the licence is terminable during the tenure of the licence, his failure and the consequences.

36. By reading the above terms and conditions, in unequivocal terms the grantor has set forth terms and conditions to the effect that the agreement of licence was revocable or it was liable for determination or termination. According to the learned Counsel for the appellant, in spite of enumeration of such terms and conditions making the agreement of license revocable, it cannot be so as it would be contrary to the law u/s 60(b) of the Easements Act. When once there is construction of permanent nature by spending money it becomes irrevocable irrespective of the terms agreed between the parties. He also submits irrespective of the terms and condition at Ex. D 1 there was oral agreement between the parties to the effect that the agreement of licence is irrevocable. This is where one has to refer to Section 92 of the Evidence Act. The learned Counsel for the appellant relies on the following decisions:

1. Parvinder Singh Vs. Renu Gautam and Others,
2. Roop Kumar Vs. Mohan Thedani,
3. Raj Kumar Rajinder Singh Vs. State of Himachal Pradesh and others,

4. Ramdip Sharma and Others Vs. Baldeo Singh,

5. AIR 1981 P&h 72

6. Hari Singh and Another Vs. Umrao Singh and Another,

In support of his contentions with reference to Sections 91 and 92 of the Evidence Act.

37. The gist of these decisions is to the effect that the parties are at liberty to lead oral evidence in order to demonstrate untrue or collusive nature of deed in writing. In other words, whenever there is a document or deed in writing, oral evidence is permissible to establish that such document was nominal, collusive or untrue. The concept of jural act of integration in the case of written instrument is recognised when it refers to right or relief of a third party to establish such contract. Section 92 of the Act is to prevent the adoption of oral evidence for the variation of contract inters between the parties to it. Whenever the language of the document is ambiguous and unclear the true intention of the parties by leading oral evidence is permissible. Whenever question arises whether the nature of the document is one or the other oral evidence to determine the nature of the contract is permissible.

38. Sections 91 and 92 of the Evidence Act reads as under:

"Section 91: When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions herein before contained.

Exception 1. - When a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved.

Exception 2.- Wills admitted to probate in (India) may be proved by the probate.

Explanation 1.- This Section applies equally to cases in which the contracts, grants or dispositions of property referred to are contained in one document and to cases in which they are contained in more documents than one.

Explanation 2.- Where there are more originals than one, one original only need to be proved.

Explanation 3.- The statement, in any document whatever, of a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence as to the same fact.

Section 92:- When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a

document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest , for the purpose of contradicting, varying, adding to, or subtracting from its terms.

Proviso (1) - Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, (want or failure) of consideration, or mistake in fact or law.

Proviso (2) - The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document.

Proviso (3) - The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved.

Proviso (4) - The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.

Proviso (5) - Any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved;

Provided that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract.

Proviso (6), - Any fact may be proved which shows in what manner the language of a document is related to existing facts."

39. Section 91 excludes oral evidence in respect of terms of written contract. Section 92 deals with exclusion of oral evidence for the purpose of contradicting varying, adding or subtracting from the terms of written contract. In one way or the other both the Sections exclude oral evidence contrary to the terms of a written contract. Though the appellant relied upon certain paragraphs of the document to establish that the licence was irrevocable but were not successful in establishing the said fact, in view of the express terms and conditions making the licence terminable or determinable. Then the learned counsel for the appellants alternatively contends that there was oral agreement between the parties to treat document at Ex.D 1 is irrevocable. This is not a situation where the appellants are coming out with a case on the ground that the document is sham or untrue or collusive or nominal. The appellants are knocking at the door of the Court to declare this Ex.D1 is valid and binding as the licence is of irrevocable nature. This is definitely contrary to the terms of the contract, which is forbidden by virtue of Section 92 of the Evidence Act. The parties are not

allowed to bring on record to contradict vary or substitute the terms of written contract by leading oral evidence. Therefore, it is not open to the appellant to contend that the parties having entered into Ex.D.1 have otherwise agreed inters to treat the licence or irrevocable one.

40. In view of the above discussions, the arguments of the learned counsel for the appellant whenever there is conflict between the earlier and later clauses irrespective of all the terms and conditions then the rule of construction requires that the earlier clause prevails over the later clause deserves to be rejected for the simple reason that none of the terms and conditions of licence i.e., agreement of licence in the earlier part at Ex.D.1 refers to irrevocable nature. On the other hand, if entire document is read it would only refer to licence of revocable nature.

41. Then we come to the question of validity of Ex.D.1 as it is contrary to Section 60(b) of the Act. Here the cases referred to by the learned counsel for the respondent authority becomes relevant for understanding the situation in better perspective. They are as under:

1. Annathu Sarojini and Others Vs. Muhammed Sainulabdeen and Others, :

"Para-10: Now I have come to the conclusion that the defendants have failed to establish their case of oral licence. The only question that has to be considered is whether the defendants can rely on Ext. A1 and that they have got an irrevocable licence. In this connection, it has to be noted that in order to attract Section 60(b) of the Easements Act, one of the essential conditions is that the licence should execute a work of a permanent character and that he has to do it "acting upon the licence". If the licence specifically disallows the licence to execute a work of a permanent character and in contravention of such a stipulation if the licensee has executed a work of a permanent character, I do not think that such a licensee can claim protection u/s 60(b) of the Indian Easements Act. Para-11: In(1988) 1 K. LT 335(Ulahannanv. Geroje) I had occasion to consider this respect of the matter. I said that "A contract to the contrary disentitles the licensee from driving advantage conferred by Section 60. There is nothing to preclude a party from binding him self to surrender land, although there may be a construction of a permanent character standing thereon. In the document in this case, there is a clear provision that at the time of surrender of possession, the defendant should dismantle the structure put up by him in the land in question and even in the written statement, the defendant's case appears to be that in case of termination of tenancy at the instance of either party, he would only be entitled to value of improvements in respect of the permanent structures put up by him. There is a clear contract which would disentitle the appellants from claiming the benefit u/s 60 of the Easement Act", In AIR 1942 All 330(Ganga Sahai v. Badrul Islam), the Court observed that "A condition in the licence that the landlord would have the right to get the site vacated whenever he so chose by the licensee deprives the licensee of the benefit of Section 60". In the same decision it is stated that "A contract to the

contrary disentitles the licensee from deriving advantage conferred by Section 60. There is nothing to preclude a party from binding himself to surrender land, although there may be a construction of a permanent character standing thereon". In *Chotey Lal Vs. Mt. Durga Bai*, , the Court observed that "Where a licensee executes a work of a permanent character under a clear understanding that he or his heirs may be called upon after certain time to leave the land, it is not open to him to plead such work as a bar against his eviction on a suit brought by the plaintiff in pursuance of the solemn undertaking given by him.

Para-12 As I said earlier, Ext. A1 clearly debars the licensee under Ext.A1 from executing any work of a permanent character. In these circumstances, I do not think that the defendants can sustain the plea that there was an oral licence and they have made constructions of permanent nature acting on that oral licence and so they are entitled to get protection u/s 60(b) of the Indian Easement Act.

2. *Ram Sarup Gupta (Dead) by Lrs. Vs. Bishun Narain Inter College and Others*, :

"Para-9: Licence as defined by Section 52 of the Act means grant of permission by a person to the other, 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. Such right does not amount to an easement or any interest in the property. The rights so conferred is licence. The grant of licence may be expressed or implied which can be inferred from the conduct of the grantor. Section 60 provides that a licence 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 licence, has executed a work of permanent character and incurred expenses in the execution. Revocation of licence may be express or implied. Section 62 enumerates circumstances on the existence of which the licence is deemed to be revoked. One of such conditions contemplates that where licence is granted for a specific purpose and the purpose is attained, or abandoned, or if it becomes impracticable, the licence shall be deemed to be revoked. Section 63 and 64 deal with licensee's right on revocation of the licence to have a reasonable time to leave the property and remove the goods which he may have placed on the property and licensee is further entitled to compensation if the licence was granted for consideration as the licence was terminated without any fault of his own. These provisions indicate that a licence is revocable at the will of the grantor and the revocation may be express or implied. Section 60 enumerates the conditions under which a licence is irrevocable. Firstly, the licence is irrevocable if it is coupled with transfer of property and such right is enforced and secondly, if the licensee acting upon the license executes work of permanent character and incurs expenses in execution. Section 60 is not exhaustive. There may be a case where the grantor of the licence may enter into agreement with the licensee making the licence irrevocable, even though, none of two clauses as specified u/s 60 are fulfilled. Similarly, even if the two clauses of Section 60 are fulfilled to render the license irrevocable yet it may not be so if the parties agree to the contrary. In *Mohammed Ziaul Haque v. Standard Vacuum*

Oil Company (1951) 55 Cal WN 232, the Calcutta High Court held that where a licence is prima facie irrevocable either because it is coupled with a grant or interest or because the licensee erected the work of permanent nature there is nothing to prevent the parties from agreeing expressly or by necessary implication that licence nevertheless shall be revocable. On the same reasoning there is nothing to prevent the parties agreeing expressly or impliedly that the licence which may not prima facie fall within either of the two categories of licence (as contemplated by Section 60) should nevertheless be irrevocable. The same view was taken by Das. J. (as he then was) in *Dominion of India v. Sohan Lal* AIR 1950 p&h 40. Bombay High Court has also taken the same view in *M.F. De Souza Vs. Childrens Education Uplift Society*, . The parties may agree expressly or impliedly that a licence which is prima facie revocable not falling within either of the two categories of licence as contemplated by Section 60 of the Act shall be irrevocable. Such Agreement may be in writing or otherwise and its terms or conditions may be express or implied. A licence may be oral also in that case, terms, conditions and the nature of the licence, can be gathered from the purpose for which the licence is granted coupled with the conduct of the parties and the circumstances which may have led to the grant of licence."

42. By reading above two decisions it is very clear even if conditions of Section 60(b) of the Act are established still by agreement between the parties the licence could be contrary to Section 60(b) i.e., revocable.

43. In the present case, in the absence of terms and conditions conferring the rights on the respondent licensor authority to determine the lease with or without reasons, the terms of licence would indicate both the parties have understood and agreed that in spite of construction of permanent welcome arch at the expenses of the appellants herein still the licence is revocable. Therefore Section 60(b) is not sacrosanct. The harmonious reading of the entire document refers to nature of the licence wherein it provides the consequences on the expiration of lease and so also how and when termination or determination of licence can occur.

44. Section 62 of the Act also needs a reference especially Clause C, which reads as under:

"Section 62: Licence when deemed revoked - A licence is deemed to be revoked.

a) ...

b) ...

c) Where it has been granted for a limited period, or acquired on condition that it shall become void on the performance or non-performance of a specified act, and the period expires, or the condition is fulfilled."

45. As already stated above the reading of the entire document as a whole would definitely indicate that the licence was for a fixed duration and it also refers to termination or determination of licence in terms of the agreement.

46. In view of the above reasoning and discussion, this Court is of the opinion that the appeal of the appellant deserves to be rejected and accordingly stands dismissed with costs throughout.