IN THE HIGH COURT OF KARNATAKA AT BENGALURU

THE HON ' BLE MR. JUSTICE B. VEERAPPA

MISCELLANEOUS FIRST APPEAL No.2620/2017 (A.A.) DATED:02-08-2017

M/ S EQUESTRAIN CENTRE FOR EXCELLENCE A COMPANY INCORPORATED UNDER THE PROVISIONS OF THE COMPANIES ACT 2013 BANGALORE-560006. REPRESENTED BY ITS DIRECTOR, MRS.SANYA KHAN VS. M/ S CHAMUNDI HOTEL PRIVATE LIMITED A COMPANY INCORPORATED UNDER THE COMPANIES ACT 1956, HAVING ITS REGISTERED OFFICE AT PALACE EASTERN COMPOUND, JAYAMAHAL ROAD, BANGALORE-560006. REPRESENTED BY ITS MANAGING DIRECTOR MR. A.C.CHANDRASHEKHAR RAJU

JUDGMENT

The appellant/applicant has filed this miscellaneous first appeal against the order dated 16.3.2017 made in A.A.No.196/2016 on the file of the LXI Additional City Civil and Sessions Judge, Bengaluru City (CCH 62) dismissing the application filed by the applicant under Section 9 (d) of the Arbitration and Conciliation Act.

I-THE BRIEF FACTS OF THE CASE ARE:

2. The applicant filed an application under Section 9 (d) of the Arbitration and Conciliation Act for grant of injunction restraining the respondent or its officials or its servants or any other persons claiming through under it from obstructing the ingress and egress of the staff, officials, public visitors, water tankers, horse ambulance, grass truck to the schedule property contending that the appellant is a non-profit company incorporated under Section 8 of the Companies Act, 2013 and is engaged in the business of promoting sports in General and Equestrian activities in general.

3. It was further contended that since last four decades, it was operating an Equestrian Center wherein training in horse riding and other related activities were carried on in the said property. The said property also comprises a stable where ever the Equestrian Centre was established, which has been used for housing horses. Currently, the appellant has housed as many as 80 horses in the stable. The appellant has been in possession of the said property since the Equestrian Center was started under the lease for various terms from time to time. It was further contended that the respondent had executed a written agreement under which the said property was leased to the appellant, though the said agreement was titled as License Agreement and the recitals in it claimed that the said property is given by way of license, but the appellant is in exclusive possession and continuously paying lease amount and currently paying the monthly rent of Rs. 88,000/-and further paying the applicable service tax. The last agreement executed by the respondent is dated 30.1.2015 for a period of 11 months which was extendable by mutual consent.

4. It was further contended that the appellant has retained various employees, who stay on the campus in order to take care of the horses and engaged various trainers, who train the riders and members, who have

enrolled with it for horse riding and other equestrian activities. The appellant's Centre participated in various events including the National Championship at Delhi and their performance in such events were outstanding.

5. It was further contended that the appellant was also in need of additional power and accordingly, with the prior consent of the respondent, it requested the DAPR Department to grant permission to BESCOM to enhance the power supply. Accordingly, the DPAR granted necessary NOC and BESCOM provided the additional power. The appellant as such took steps for setting up a club house comprising of cafeteria, kitchen, dining and sitting area, wash room, etc. For such infrastructure, the appellant had to construct flooring with tiles and also partition walls with appropriate finish and use canvas and tiles for roofing with appropriate use of wood and other materials.

6. It was further case of the appellant that when the things stood thus, the appellant was shocked to receive a notice dated 31.3.2016 issued by the respondent alleging that although the appellant was licensed to use 1,50,700 sq.ft. of area, it has been illegally using excess area measuring 2,66,119 sq.ft. Therefore, the respondent called upon the appellant to vacate and handover the said property within three months to which the appellant sent a reply on 2.5.2016.Since the purported termination of the agreement was illegal as there was arbitration clause in the said agreement, the appellant filed an Arbitration Application under Section 9 of the Arbitration and Conciliation Act, 1996 for injunction along with an application I.A.1 seeking interim order till the disposal of A.A.No. 196/2016. The trial Court rejected the said I.A.I on 4.8.2016 against which the appellant filed an appeal before this Court in MFA No.5818/2016 which later came to be converted to W.P.No.52717/2016 and this Court by the order dated 1.12.2016 restrained the respondent or anybody acting under the respondent from obstructing the peaceful possession and enjoyment of the agreement schedule property in view of the event to be held between 3.12.2016 to 31.12.2016, till the next date of hearing. Subsequently, the trial Court passed the impugned order; Hence, the present appeal is filed.

7. The respondent filed objections to the application denying the averments made in the application and contended that the application filed by the applicant is liable to be dismissed for suppression of material facts and the appellant has not come to the Court with clean hands. It has further contended that the appellant approached the respondent for permission to carry on horse riding and other equestrian sports in the premises in the year 2000 and the respondent granted such permission by way of license and at all times, both parties were ad-idem regarding the license and the terms thereof. The last agreement of license was given on 30.1.2015.It is further contended that the appellant without notice of permission of the respondent has carried out trade and operation of a full fledged establishment on the premises with an area of 2,66,119 sq.ft., instead of 1,50,000 sq.ft., for which license was issued. It is further contended that despite there being Clause 6.4 to terminate the license with immediate effect for violation of terms of agreement, the respondent chose to terminate the license under Clause 6.1 by giving three months notice. Hence, the appellant had to vacate the premises and find alternative accommodation within the period of time as agreed under the agreement.

8. The The respondent further contended that under the provisions of Section 60 of the Indian Easements Act, 1982 revokes grant of license. The notice issued to the appellant was deemed to vacate the premises on 4.7.2016 and has filed the A.A.196/2016 suppressing the material facts. It was further contended that clause 4.2 of the agreement confirms that the parties have agreed that the agreement being one of LICENSE creates a bar to lease or easement or grant. Therefore, sought for dismissal of the application.

II-ISSUES

9. The trial Court considering the application and objections of the parties to the lis has framed following issues which reads as under:

1. Whether the transaction between the applicant and respondent is a lease or a license?

2. Whether the termination of the agreement dated 30.1.2015 by the respondent is sustainable?

3. Whether the respondent had by its representation and conduct assured a renewal of the term of the lease?

4. Whether the applicant is entitled to seek specific performance of the promise of renewal/extension of lease term?

10. Considering the entire material on record, the trial Court recorded a finding that the transaction between the applicant and the respondent is a license. The notice of termination of agreement dated 31.3.2016 issued by the respondent is in accordance with law and the applicant is not entitled for any relief or extension of license. Accordingly, by the impugned order 16th March, 2017 dismissed the application filed by the applicant-appellant. Hence, the present appeal is filed.

11. I have heard the learned Counsel for the parties to the lis.

III-RIVAL CONTENTIONS OF THE PARTIES

12. Sri Aravind Kamath K., learned Counsel for the appellant-applicant vehemently contended that the impugned order passed by the trial Court dismissing the application filed by the appellant under Section 9 (d) of the Arbitration and Conciliation Act, 1996 is erroneous and contrary to the material on record. He further contended that the trial Court having held that the very question of termination falls within the purview of the Arbitral Tribunal, pending determination of such a vital question, the trial Court ought to have granted protection by way of interim relief sought for by the appellant. The appellant asserts that the very agreement with the respondent contains a covenant which mandates the respondent to extend the terms under the agreement. The trial Court has ignored the fact that the appellant is providing training to various young people, some of whom are due to participate in national and international equestrian events during the later part of the year and that the appellant has more than 40 horses in the schedule property which require regular care and supply of essentials.

13. He further contended that the trial Court committed a grave error in concluding that the appellant was a mere licensee and that the possession of the premises remained with the respondent ignoring the fact that the possession of the appellant has been in exclusive and continuous possession till date and that he has established additional infrastructure like cafeteria and washroom as well as its employees have been permanently residing on the said property .He further contended that the terms of agreement dated 30.1.2015 entered into between the parties dated clearly indicate that it is a lease and not license. Therefore, the appellant cannot be evicted from the schedule property by the respondent without following the procedure as contemplated under the provisions of the Transfer of Property Act, 1882. Therefore, he sought to set aside the impugned order by allowing the present appeal.

14. In support of his contentions, learned Counsel relied upon the dictum of the Hon'ble Supreme Court in the case of C.M.Beema -vs-P.N. Ramachandra Rao reported in (2004) 3 SCC 595 to the effect that by reading of the entire agreement entered into between the parties clearly indicate that it is a lease agreement and therefore, the respondent has to invoke the provisions of the Transfer of Property Act to evict the appellant.

15. He further relied upon a decision of the Hon'ble Supreme Court in the case of Krishna Ram Mahale (Dead), by his Lrs. -vs-Mrs. Shobha Venkat Rao reported in AIR 1989 SC 2097 wherein it has been held that Indian persons are not allowed to take forcible possession and they are required to obtain such possession as they are entitled to through a Court. The law requires that the true owner should dispossess the trespasser by taking recourse to the remedies under the law.

16. He further contended that in the case of M/s. Anamallai Club -vs-Government of Tamil Nadu and Others reported in AIR 1997 SC 3650, the Hon'ble Supreme Court has held that the compliance of rule of law should be encouraged and should deprive the person who wanted a person in lawful possession removed from possession, accordingly to proper form and to prevent him from going with a high band and eject such person.Undoubtedly, the true owner is entitled to retain possession even though he had obtained it by force or by other unlawful means but that would not be a ground to permit the owner to take law into his own hands and eject the person in juridical possession or settled possession without recourse of law.

17. He further relied upon a decision of this Court in the case of Patil Exhibitors (Pvt) Ltd., -vs-The Corporation of the City of Bangalore reported in AIR 1986 KANT 194 (DB) wherein it has been held that no forcible dispossession of person who has juridical possession and landlord can be restrained from resorting to high handed acts aimed at forcible dispossession otherwise than in accordance with law.

18. Per contra, Sri Adithya Sondhi, learned Senior Counsel for the respondent sought to justify the impugned order and contended that the appellant has not come to the Court with clean hands and has suppressed the material facts of the case. He further contended that though the appellant continued as a licensee of the entire property and the control of the suit schedule property is with the respondent. He strenuously contended that by reading of the entire document, it is a license and not lease. He specifically invited the

attention of the Court to Clause 4.2 of the agreement dated 30.1.2015 entered into between the parties and contended that it is a license and not lease as alleged. Once it is a license, the appellant has to vacate the suit schedule property since the lease period has expired.

19. It was further contended that the very appellant filed O.S.No. 2306/2017 before the XLIV Additional City Civil and Sessions Judge, Bangalore and in the plaint at paragraphs 19 and 20 it is specifically stated that the applicant consulted with legal practitioner to seek legal remedy to restrain the defendant from causing obstruction by Court of law and the advocate of the plaintiff filed an Arbitration Application in the Court of the Additional City Civil and Sessions Judge, Bengaluru in A.A.No. 196/2016 and also an interim application under Section 9 (d) of the Arbitration and Conciliation Act, 1996 to restrain the defendants or his agents and the same was dismissed by the Trial Court on 4.8.2016. Subsequently, he filed Writ Petition No.52717/2016 before this Court and an ad-interim order was passed restraining the defendant not to interfere into the suit schedule property of the plaintiff. It is further stated in the plaint in the said suit that the Arbitration Application was dismissed on 16.3.2017 and the plaintiff's advocate instead of selecting the correct lawful forum for seeking proper remedy, has adopted the wrong approach which has resulted in not obtaining an order of injunction against the defendant. However, selection of wrong forum is no bar for filing a proper suit for injunction for protection of lawful possession and suit for losses and damages from the defendant. Subsequently, the plaintiff filed a memo 5.4.2017 to the effect that by virtue of the order dated 30.3.2017 passed in MFA No.2620/2017, the said suit has become infructuous and hence, the same be dismissed as withdrawn. Accordingly, the said suit (O.S.No.2306/2017) came to be dismissed as withdrawn. Therefore, the learned Senior Counsel for respondent has sought to dismiss the present appeal.

20. In support of his contentions, learned Counsel for the respondent has relied upon the judgment of the Hon'ble Supreme Court in the case of Delta International Ltd. -vs-Shyam Sundar Ganeriwalla and Another reported in (1999) 4 SCC 545 wherein it has been held that the intention of the parties is the meaning of the words used where terms of the agreement are vague or having double meaning one which is lawful should be preferred.

21. Further a reliance is also placed on the Division Bench judgment of the Andhra Pradesh High Court in the case of Hyderabad Metropolitan Development Authority and Others -vs-Hotel Malligi Pvt. Ltd., reported in AIR 2017 AP 40 with regard to the interpretation of lease and license.

22. With regard to revocation of license, the learned Counsel for the appellant sought to rely upon the Order dated 1.6.2015 passed in Writ Petition Nos. 2581/2015 and 3740/2015 by this Court in the case of G. Raja -vs-The Government of Karnataka and Others.

IV-POINTS FOR DETERMINATION

23. In view of the rival contentions urged by the learned Counsel for the parties, the points that arise for consideration in the present appeal are:

i) Whether the agreement of license dated 30th January, 2015 is a lease as contemplated under the provisions of Section 105 of the Transfer of Property Act, 1882 or a license under the provisions of Section 52 of the Indian Easements Act, 1882?

ii) Whether the trial Court is justified in dismissing the application filed by the appellant under the provisions of Section 9 (d) of the Arbitration and Conciliation Act?

24. I have given my thoughtful consideration to the arguments advanced by the learned Counsel for the parties and perused the entire available record carefully.

V-CONSIDERATION

25. It is an undisputed fact that the respondent is the owner of the suit schedule property morefully described in the schedule of Arbitration Appeal No. 196/2016.It is the case of the respondent that the suit schedule property was given on license to the present appellant on a monthly rent of Rs.88,000/-and the license was extended from time to time and the last agreement of license entered into between the parties was on 30.1.2015 for a period of 11 months and the term expired and the present appellant has violated the terms and conditions of the license. Therefore, a legal notice was issued terminating the license and revoked the grant of license exercising powers under the provisions of Section 60 of the Indian Easements Act, 1882.

26. It is the case of the present appellant that the appellant was operating equestrian Centre for the last four decades wherein training in horse riding and other related activities were carried on in the said property which comprises a stable where ever the equestrian centres are established and has been used for housing horses. The appellant has been in possession of the said property since the equestrian centre was started under the lease for various terms from time to time and the last agreement was dated 30.1.2015 entered into between the parties titled as license agreement and the recitals in it is that the suit property is given by way of license but the appellant is in exclusive possession and continuously and currently paying the monthly license fee of Rs.88,000/-per month. It is lease and not license and the appellant has obtained permission from the Department of DAPR and BESCOM to enhance the power supply. Accordingly, both the authorities have granted permission and the appellant has taken steps for setting up of club house comprising cafeteria, kitchen, dining and sitting area, wash room, etc. Therefore, the appellant would contend that the document entered into between the parties is a lease and not license.

27. In view of the aforesaid contentions/counter allegations, it is worthwhile to read the document entered into between the parties styled as agreement of license dated 30th January, 2015, wherein the covenants of the document between the parties clearly indicates that it is a license. The relevant terms/clauses of the agreement are:

" Clause 1.1:The LICENSOR hereby licenses and authorizes the LICENSEE at all times during the continuance of this license to run a centre for horse riding, equestrian sports and other sports connected with horse riding and for maintaining a club house for its members;

Clause 1.2:the license is for a period of 11 months which can be extended and renewed by mutual consent between the parties.

Clause 4.2.The parties hereto agree and covenant that the right granted by the LICENSOR to the LICENSEE under the agreement is a LICENSE awarded in terms of Section 52 of the Indian Easements Act and does not purport to be a lease or an easement or a grant. The license is not assignable or sub lettable or sub-licensable by the LICENSEE in favour of any other person or party.

Clause 4.5:The LICENSEE expressly affirms and covenants that it shall have no right to put up any permanent structure or execute any works of the permanent character in or around the SCHEDULE PREMISES.

Clause 4.7:The LICENSEE shall utilize and maintain the SCHEDULE PREMISES in a clean and habitable condition.

Clause 5.1:The LECENSEE in the use and enjoyment of the said SCHEDULE PREMISES for the duration of the license and will, on the surrender of the said SCHEDULE PREMISES, permit them to remove all their belongings and fixtures. "

28. The complete reading reading of the document entered into between the parties clearly depicts the real intention of the parties that it is an agreement of license and parties have come to a clear understanding that it is a license and therefore, they have included Clause 4.2. as stated supra agreeing that the document entered into between the parties is a license in terms of Section 52 of the Indian Easements Act.

29. The said document has been acted upon by both the parties. Therefore, it cannot be construed as a lease deed as defined under Section 105 of the Transfer of Property Act as alleged.

30. It is relevant to consider the definition of ' Lease ' under the provisions of Section 105 of the Transfer of Property Act which reads as under:

"105. Lease defined-- A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

Lessor, lessee, premium and rent defined-The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent. "

31. A plain reading of the said provision makes it clear that the immoveable property leased is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms. The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent.

32. The ' License ' under the provisions of Section 52 of the Indian Easements Act is defined as under:

" License " defined.-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 license.

33. A plain reading of the said Section makes it clear that 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 license.

For example, a person who is residing with the parents in the house cannot claim any illegal character much less the character of a licensee as defined under Section 52 of the Easements Act, but he is residing simpliciter as a member of the family and nothing more and nothing less.

34. The provisions of Sections 63 and 64 of the Indian Easements Act deals with licensee's rights on revocation and licensee's rights on eviction which make it clear that where a license is revoked, the licensee is entitled to a reasonable time to leave the property affected thereby and to remove any goods which he has been allowed to place on such property and where a license has been granted for a consideration, and the licensee, without any fault of his own, is evicted by the grantor before he has fully enjoyed, under the license, the right for which he contracted, he is entitled to recover compensation from the grantor.

35. The learned Single Judge of this Court in the case of G. Raja -vs-The Government of Karnataka and Others in W.P.Nos. 2581/2015 and 3740/2015 while considering the provisions of Sections 52 and 63 of the Indian Easements Act, 1882 at paragraphs 7 and 8 has held as under:

" 7. A Division Bench of the Madras High Court in the case of General Merchant Association, represented by Secretary and Treasurer and others v Corporation of Chennai, represented by its Commissioner, Chennai-LAWS (Mad.) 1998-12-29 (W.A. No.1150 of 1997) decided on 12.12-1998 was considering a similar question. It has been held that:

" It is also equally well settled the position of a licensee after termination becomes unlawful and the licensee is not entitled to any injunction restraining the licensor from evicting him as unlike a tenant a licensee does not

have judicial possession and the possession always remains with the licensor and what was granted is a privilege in terms of the license, which in the absence of such a grant becomes unlawful.

The occupation of the writ petitioners with respect to the stalls/shops in public market is referable to the license originally granted as their status is that of a licensee. Once such a license is terminated, the possession of the stalls become unlawful as they have no right and the possession of such possession after termination is not protected by any statutory provision. In terms of Section 63 of the Easements Act 1982, where license is revoked the licensee is entitled to reasonable time to leave the property for removing all his goods which he has been allowed to place. A person continuing in the premises after the termination of license, his status is as already pointed out is unlawful and he has no semblance of any right to continue in the premises. "

8. Section 63 of the Easements Act lays down the licensee's right on revocation. It states that where a license is revoked, the licensee is entitled to a reasonable time to leave the property affected thereby, and to remove any goods which he has been allowed to place on such property. Thus, a license is revocable at any moment at the instance of the licensor. The provisions made by this section is very salutary to safeguard the interest of the licensee from being jeopardizes by a mere frivolous or vexatious exercise of his right of revocation by the licensor. But for these provisions the licensee's interest would have been at the mercy of the licensor. According to this section, the licensee is entitled to a reasonable time, --

(a) to leave the property affected thereby; and

(b) to remove any goods which he has been allowed to place on such property. "

36. The Hon'ble Supreme Court while considering the provisions of Section 52, 105 and 107 of the Transfer of Property Act, 1882 in the case of Delta International Ltd. -vs-Shyam Sundar Ganeriwalla and Another reported in (1999) 4 SCC 545 at paragraphs 18 and 19 has held as under:

" 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 execute 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 parties have stated, it provides as under:

" 1.2 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 α tenancy or lease or as a document within the preview 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. "

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 license was created and not a lease. The said clause is in positive as well as negative form providing that the agreement was a license 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 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 of certain terms mentioned in the deed can have double intendment. As stated above, 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. "

37. The Division Bench of Andhra Pradesh High Court in the case of Hyderabad Metropolitan Development Authority and Others -vs-Hotel Malligi Pvt. Ltd., reported in AIR 1970 AP 40 while considering the provisions of Section 9 of the Arbitration and Conciliation Act, 1996 and the provisions of the Indian Easements Act at paragraphs 24, 26 and 29 has held as under:

" 24. The concept of a license, being wholly different from that of a lease, it is not open to the licensee to assert any leasehold rights over the licensed premises after expiry of the license period and seek to prolong its occupation thereof. Its status upon expiry of the license period is that of a trespasser. In any event, even if the licensee is in a position to establish that it was lawfully deprived of the benefits of the license during its subsistence, the only relief that it can seek is in the form of compensation/damages. There is no legal and tenable basis for a licensee to assert a right to continue in occupation of the licensed premises after expiry of the license period. The Court below seems to have been unmindful of the distinction between a license and a lease, as is clear from the order dated 29.09.2016 passed in Arbitration O.P.No.2229 of 2016, where it used the terms license and lease interchangeably.

26. Sri V.Narasimha Goud, learned standing counsel, would place reliance on COX AND KINGS LTD. V/s. INDIAN RLY. CATERING AND TOURISM CORPORATION LTD. AND ANR. to contend that merely because the licensee invested money in developing the licensed premises, it cannot seek an injunction to permit it to continue in occupation beyond the license period. In this case, the Supreme Court was dealing with a lease and not a license but even then, the lessee was held disentitled to a mandatory injunction to permit operation of the leased train after the lease agreement/arrangement was terminated. The Supreme Court pointed out that the petitioners remedy would lie in an action for damages for variation of any of the terms and conditions of the agreement.

29. Be it viewed from any angle, this Court finds no justification in the Court below granting injunctions in favour of the licensee permitting it to continue in occupation of the licensed premises after the admitted expiry of the license period. As is clear from the statute and case law, the only remedy for the licensee, if it makes out a case, is to sue for damages and it cannot resort to trespassing over the licensed premises after expiry of the license period. "

38. In view of the reasons stated supra and in view of the specific clause i.e., 4.2 mentioned in the document dated 30.1.2015 confirms that the transaction between the appellant and the respondent is is a a license as contemplated under the provisions of Section 52 of the Indian Easements Act, 1882.

VI JUDGMENTS RELIED UPON BY THE LEARNED COUNSEL FOR THE APPELLANT

39. The learned Counsel for the appellant has relied upon the dictum of the Hon'ble Supreme Court in the case of C.M.Beena -vs-P.N. Ramachandra Rao reported in (2004) 3 SCC 595 with regard to lease or license.That was a case where the property was a shop situated on the ground floor of the building (known as Woodlands Building) on M.G. Road, Ernakulam. The respondent filed a civil suit seeking issuance of mandatory injunction directing the appellants to hand over vacant possession over the shop to the respondent on the ground that the license to occupy the suit premises was terminated. The trial Court directed the suit to be dismissed by recording a finding that one of the two appellants (who are father and son) was a tenant and not a mere licensee. The son was held to be a tenant and is being referred to as the appellant.

The decree was maintained in first appeal. In the second appeal preferred by the landlord, the High Court has set aside the judgments and decrees of the two Courts below and directed a decree as prayed for being passed. In those circumstances, the Hon'ble Supreme Court has held that generally speaking, the difference between a ' lease ' and license ' is to be determined by finding out the real intention of the parties as decipherable from a complete reading of the document. This Court has no quarrel with the law laid down by the Apex Court stated supra, but by a complete reading of the document entered into between the parties in the present case especially Clause 4.2 of the agreement, the transaction between the parties is a license and not lease. Therefore, the said judgment has no application to the facts and circumstances of the present case.

40. Another judgment relied upon by the learned Counsel for the appellant is New Bus-Stand Shop Owners Association -vs-Corporation of Kozhikode and Another reported in (2009) 10 SCC 455. In the said case, the Hon'ble Supreme Court while dealing with the provisions of specific relief Act, Transfer of Property Act and Kerala Stamp Act has held that the intention of the parties is to create a license and not a lease and right of exclusive possession was retained by the Corporation. In that view of the matter, the relationship which is created between the Corporation and the shop holders is that of a licensor and licensee and not that of a lessor or a lessee. The law laid down by the Hon'ble Supreme Court in the said case squarely applies to the facts and circumstances of the present case. By intention of both the parties to the lis, it is clear that the document which came into force between the parties was a license.

41. In so far as the judgment relied upon by the learned Counsel for the appellant in the case of East India Hotels Ltd.-vs-Syndicate Bank reported in 1992 SUPP (2) SCC 29 is: that it was a case where the lease and license agreement was entered into by the appellant and the respondent. The agreement contained covenant for renewal of lease terms on expiry of original terms and the respondent applied for renewal of term but appellant refused to renew in view of the terms of agreement that it was a lease. Therefore, the Hon'ble Supreme Court held that no one is permitted to take the law in one's own hands and to dispossess person in actual possession without due course of law and ultimately, the said judgment was a conflicting judgment. Therefore at para-50 it was held that in view of the conflicting judgments given, the matter may be placed before the Hon'ble the Chief Justice of India for constituting a larger bench for resolving the conflict. In view of the conflicting judgment stated supra, the said judgment has no application to the facts and circumstances of the present case.

42. In so far as the judgment relied upon by the learned Counsel with regard to Rame Gowda (Dead) By L.Rs. -vs-M. Varadappa Naidu (Dead) by L.Rs., and Another reported in (2004) 1 SCC 769, the Hon'ble Supreme Court while considering the provisions of Section 6 of the Specific Relief Act, 1963 has held that the occupant in ' settled possession cannot be dispossessed without due recourse to law. That was a case where a person, was in possession of land in assumed character of owner and exercising peaceably the ordinary rights of ownership has perfectly good title against all the world but the rightful owner. In the present case, the appellant claims that he is in possession of the property in dispute on the basis of the license executed and renewed from time to time and ultimately, the last license between the parties dated 30.1.2015 expired and license was terminated. Therefore, the facts of the said case has no application to the facts and circumstances of the present case.

43. Another judgment relied upon by the learned Counsel for the appellant is Krishna Ram Mahale (Dead) by his L.Rs. -vs-Mrs. Shobha Venkat Rao reported in AIR 1989 SC 2097.It was a case under the provisions of Section 6 of the Specific Relief Act, 1963 with regard to an agreement entered into between the parties on December 25, 1956 whereby the plaintiff was granted permission to conduct the business of a restaurant known as ' Meenakshi Bhuvan ' which later came to be known as ' Central Café Udupi ' of which he was the owner and which was conducted in tenanted premises. The restaurant was situated at Vishvas Nivas King, Edward road Parel, Bombay. The period of this agreement was for five years commencing from December 25, 1956 with an option to renew the same. Under the agreement, defendant No.3 was referred to as the owner and the plaintiff was referred to as the conductor.

In those circumstances whether the dispossession of trespasser is permissible or not, the Hon'ble Supreme Court held that in India, persons are not allowed to take forcible possession. They are required to obtain such possession as they are entitled to through a Court. The law requires that the true owner should dispossess the trespasser by taking recourse to the remedies under law. Admittedly in the present case, the transaction between the appellant and the respondent is under the provisions of Section 52 of the Indian Easements Act

as licensor and licensee. Therefore, the facts and circumstances of the case referred to by the learned Counsel has no application to the facts and circumstances of the present case.

44. Lastly the learned Counsel for the appellant relied upon the dictum of this Court in the case of Patil Exhibitor (Pvt) Ltd. -vs-The Corporation of the City of Bangalore reported in AIR 1986 Kant 194 where Patil Exhibitors (Pvt) Ltd., the appellant was lessee of the Municipal Corporation of Bangalore respondent a respecting the plaint schedule property a Cinema house located in the public utility building on the M.G. Road, Bangalore under a deed of lease dated 31.10.1981. The term of the lease came to an end, by efflux of time, on the expiry of 31.8.1985.Even before the expiry of the term under the lease, the appellant brought the present suit for specific enforcement of an alleged agreement to renew the lease said to have contained in Clause 27 of the sale deed dated 31.10.1981.Taking into consideration, facts and circumstances of the case, this Court is of the opinion that the appellant was entitled to a limited injunction but on terms. The respondent was restrained from dispossession the appellant forcibly and otherwise than in accordance with law. That was a case where with a clear understand between the parties, a lease was executed on 31.10.1981 and before the expiry of the term under the lease, the appellant approached this Court and this Court has taken a view that the appellant cannot be dispossessed without recourse to the law. The said case has no application to the facts and circumstances of the present case since admittedly the document styled as license agreement dated 30.1.2015 entered into between the parties clearly depicts as license.

VII-REGARDING SUIT FILED BY THE APPELLANT:

45. It is relevant to state that the present appellant filed O.S. No.2306/2017 on 31.3.2017 for Permanent Injunction restraining the present respondent-defendant, his representatives etc., from in any way interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property either by trespassing or alienating in any manner disturbing the suit property without following the due procedure of law, contending that he is the lawful tenant under the defendant by virtue of the lease agreement dated 15.12.2000. It is also stated in the said suit that due to wrong advice, the appellant plaintiff has filed Arbitration Application in the Court of the LXI Addl.City Civil & Sessions Judge, Bangalore in AA No. 196/2016 and also filed interlocutory application. The interlocutory application came to be dismissed by the trial Judge on 4.8.2016.Aggrieved by the same, the present appellant has initially filed Miscellaneous First Appeal No.5818/2016 before this Court and the same was withdrawn and subsequently W.P. No.52717/2016 was filed, which came to be disposed of on 30.1.2017 restraining the defendant not to interfere with the suit schedule property, pending final disposal of the Arbitration Application. It is relevant to extract paragraphs 19, 20 and 21 of the plaint in O.S. No.2306/2017, which reads as under:

" 19. The plaintiff submits that, the plaintiff has consulted with legal practitioner to seek legal remedy to restrain the defendant from causing obstruction by court of law, the advocate of the plaintiff has filed an Arbitration application in the court of the Additional City Civil & Sessions Judge, Bengaluru in AA No. 196/2016 and also filed interim application under Section 9 (d) of the Arbitration and Conciliation Act 1996, to restrain

the defendants or his agents, the same was dismissed by the trial Judge on 4.8.2016 aggrieved by that the plaintiff have filed MFA before the Hon'ble High Court of Karnataka the same was dismissed as withdrawn, thereafter the plaintiff have filed Writ Petition No.52717/2016 (GM CPC) the Hon'ble High Court of Karnataka passed an ad-interim order restraining the defendant not to interfere in to the suit schedule property of the plaintiff pending final disposal of the Arbitration Application on 1.12.2016 the copy of the order passed by the Hon'ble High Court of Karnataka in Writ Petition No.52717/2016 dated 30.01.2017 is produced for kind perusal of this Hon'ble Court.

20. The plaintiff submit that, the Arbitration Application was dismissed on 16/03/2017 the plaintiff advocate instead of selecting the correct lawful forum for seeking of proper remedy, have adopted the wrong approach which is resulted in not obtaining an order of injunction against the defendant. However selection of wrong forum is no bar to file a proper suit for injunction for protection of lawful possession and suit for losses and damages from the defendant.

21. The plaintiff submit that, the defendant taking undue advantage of the dismissal of the Arbitration Application on 16/03/2017 has come at the suit schedule property, alongwith some 30 persons, threatened the plaintiff to take out all their horses, and instruments, otherwise the horses will be killed, and the plaintiff will be subject to dare consequences. The plaintiff has approached to the concerned jurisdictional police station to lodge α complaint against the defendant, the police have replied to seek proper order from the court then the police will come to implement the court order. The plaintiff is not aware for what reason her advocate has approached Arbitration Court, even though she had requested to protect her lawful possession from the defendant. Wrong legal advice from the advocate should not cause injustice to the plaintiff. Equity demands that unless and until defendant recourse to due procedure of law for taking possession plaintiff is legally entitled to protect her possession from this Court. "

46. Unfortunately the present appellant filed memo dated 5.4.2017 before the trial Court contending that by virtue of the interim order dated 30.3.2017 passed in MFA No.2620/2017, the suit becomes infructuous and therefore, the suit be dismissed as withdrawn. Accordingly, the suit came to be dismissed withdrawn. The said conduct of the appellant approaching different Courts with different pleadings accusing the advocate for the wrong advice, clearly indicates that he has not come to the Court with clean hands. The present appellant has not brought to the notice of this Court regarding disposal of the suit after filing of the present Miscellaneous First Appeal and he has suppressed the material facts before this court.

VIII FINDINGS RECORDED BY THE TRIAL COURT

47. The trial Court while considering the application under Section 9 (d) of the Arbitration and Conciliation Act, 1996 in the impugned order after framing issues has recorded a finding that the transaction between the appellant and the respondent is a license and the termination of the agreement dated 30.1.2015 by the respondent is sustainable and the appellant is not entitled to seek specific performance of the promise of

renewal/extension of the license term. The trial Court further recorded a finding that from the plain reading of the agreement of license produced by the applicant, it appears that it is clearly recited in the agreement as to deed is agreement of license. It is an undisputed fact that the respondent by issuing the notice terminated license of the applicant dated 30.1.2015 directing him to vacate the premises and hand over the peaceful possession to the respondent on or before 4.7.2016.In the pleadings itself at the initial stage, the appellant has contended that he entered into agreement of license with the respondent, but later it changed its version that it was a lease, but not license. If that was so, the appellant should have raised such plea in the earlier stage of proceedings. The argument sought to be raised in the Arbitration proceedings with regard to the transaction entered into between the parties being a lease or that a license executed was irrevocable in nature should have been raised much earlier point of time.

However in the pleadings, the petitioner has relied upon the terms of the license deed dated 30.1.2015.The petitioner entered into the relationship with respondent with open eyes. The petitioner entered into contractual relationship and his relationship is purely governed by the law of Contract. In the document relied upon by the appellant, everywhere it is recited as license and parties are referred to as licensor and licensee. In the agreement at Clause 4.2 it has been clearly explicated in an unambiguous manner as under:

" The parties hereto agree and covenant that the right granted by the licensor to the licensee under this agreement is a license awarded in terms of Section 52 of the Indian Easements Act and does not purport to be a lease or easement or a grant. " 48. The trial Court recorded a further finding that Clause 4.5 expressly provided that " the licensee expressly affirms and covenants that it shall have no right to put up any permanent structure or execute any works of the permanent character in or around the schedule premises ".Therefore, now the appellant is estopped to say that actually it was a lease, but not license. The same very clause in the said document expressly stated that the document was not a lease and relationship between the parties was only a licensee and licensor and not that of landlord and tenant. Ultimately, the trial Court dismissed the application filed under Section 9 (d) of of the Arbitration and Conciliation Act, 1882.

IX-CONCLUSION

49. The material on record clearly depicts that admittedly the transaction between the appellant and the respondent started in the year 2000 under an agreement of license. It was renewed from time to time and the last agreement of license was entered into between the parties on 30.1.2015, on which basis the appellant filed an application under Section 9 (d) of the Arbitration and Conciliation Act, 1996 and on complete reading of the document entered into between the parties clearly depicts the real intention of the parties. In view of clause 4.2 of the agreement invoking the provisions of Section 52 of the Indian Easements Act, 1882, it is a document of license and not lease. Therefore the respondent has issued termination of notice as contemplated in terms of the license entered into between the parties and the trial Court considering the entire material on record has rightly recorded a specific finding that the transaction between the parties is a license as contemplated under Section 52 of the Indian Easements Act, 1882 and dismissed the application.

50. For the reasons stated above, the 2nd point raised in the present appeal has to be held in the affirmative holding that the trial Court is justified in dismissing the application filed by the appellant under the provisions of Section 9 (d) of the Arbitration and Conciliation Act, 1882.The reasons assigned and the conclusion arrived at by the trial Court are based on the material documents available on record. The same is in accordance with law. The appellant has not made out any ground to interfere with the impugned order passed by the trial court exercising the appellate jurisdiction of this Court under the provisions of Section 37 (1) of the Arbitration and Conciliation Act, 1996.Accordingly, the appeal is dismissed.

51. In view of the peculiar facts and circumstances of the present case, two months time is granted to the appellant from today to quit, vacate and hand over vacant possession of the suit schedule property to the respondent as it was existing as on the date of the agreement of license entered into between the parties.

Ordered accordingly.