



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
CIVIL REVISION APPLICATION NO. 460 OF 2024.

Rekha Harshad Gandhi and ors.

...Applicants

Versus.

Rajendra Shantilal Gandhi

...Respondent

Mr. S.A. Jabbar i/b Ms. Aarti Suvarna for the Applicants.

Mr. Nirman Sharma with Mr. Ansh Karnawat and Mr. Deeshank Doshi  
i/b Mr. Jayant Parmar for the Respondent.

CORAM: SANDEEP V. MARNE, J.

Reserved On: 24 April 2026.

Pronounced On: 05 May 2026.

**Judgment :**

1) The Applicants have invoked revisionary jurisdiction of this Court under section 115 of the Code of Civil Procedure, 1908 (**the Code**) for assailing judgment and decree dated 19 July 2023 passed by the Appellate Bench of the Small Causes Court dismissing PSCC Appeal No. 295 of 2014 and confirming the judgment and order dated 3 May 2014 passed by the Court of Small Causes Court in L.E. & C. Suit No. 269/322 of 2000. The Trial Court had decreed the Suit filed by the Respondent-Plaintiff directing the Applicants to handover possession of the suit



premises and to pay arrears of compensation of Rs.1,08,000/- to the Plaintiff. The Applicants are aggrieved by concurrent findings recorded by the Trial and the Appellate Courts that the original Defendant is the licensee in respect of the suit premises and that the license is validly terminated.

2) Original Plaintiff-Rajendra Shantilal Gandhi, alongwith his mother, Dhanlaxmi Shantilal Gandhi, claimed ownership of Gala Nos.13, 14, 15 and 16 admeasuring total area of 2203.34 sq.ft situated at Raut Industrial Estate, Senapati Bapat Marg, Mahim, Mumbai -400 016. The four galas are adjacent to each other and capable of being used as single unit. Original Defendant-Harshad Shantilal Gandhi is the elder brother of the Plaintiff. It is the case of the Plaintiff that Defendant was permitted by the Plaintiff and his mother to use and occupy the four galas for his business purposes since April 1974 on payment of monthly compensation of Rs.6,000/- to be divided into Rs.3,000/- each for the Plaintiff and for his mother. The four galas-13, 14, 15 and 16 totally admeasuring 2203.34 sq.ft are thus the '**suit premises**'. Plaintiff claimed that the Defendant was in arrears of monthly compensation from 1 February 1988. According to the Plaintiff, the brothers settled the disputes and recorded the minutes of the meeting on 26 September 1997 but the Defendant failed to act as per the settlement. The Plaintiff therefore issued fresh notice to the Defendant calling him upon to pay arrears of compensation and terminated the license. By letter dated 21 February 2000, Defendant informed the Plaintiff that he had purchased 50% ownership share of mother-Dhanlaxmi Gandhi. Plaintiff accordingly



instituted L.E & C. Suit No. 269/322 of 2000 seeking recovery of possession of the suit premises from the Defendant.

3) The Defendant appeared in the suit and filed Written Statement contending *inter-alia* that he has purchased the suit premises in the year 1974, in the names of his mother Dhanlaxmi and brother-Plaintiff who was only 21 years old. That Defendant was maintaining the family and had employed Plaintiff in his factory. That for requirement of larger premises for his factory, Gala Nos.13, 14, 15 and 16 (suit premises) was agreed to be purchased by the Defendant and for the sake of convenience, the purchase was made in the joint names of mother-Dhanlaxmi and Plaintiff. That the entire purchase price of Rs.85,000/- was paid by the Defendant. That Defendant continued his business in the 4 units (suit premises) after the date of its purchase. That Defendant paid all the society bills. That Plaintiff left Defendant's service in the year 1990 and induced some workers and opened another factory in the name of Industrial Instruments in Hiren Light Industrial Estate, Mogul Lane, Mahim, Mumbai. That by registered Deed of Assignment, Defendant purchased undivided half share of mother-Dhanlaxmi in Galas Nos.13 to 16 without prejudice to his claim of ownership in respect of all the four units. Defendant denied that he was the licensee in respect of the suit premises. Based on pleadings, the Trial Court framed issues. Parties led evidence in support of their respective claims.

4) After considering the pleadings, documentary and oral evidence, the Trial Court proceeded to decree the suit by judgment and order dated 3 May 2014. The Trial Court held that Plaintiff is the licensor,



and Defendant is the licensee in respect of the suit premises and that the license was validly terminated. The Trial Court accordingly directed the Defendant to handover possession of the suit premises to the Plaintiff with further directions to pay arrears of compensation of Rs.1,08,000/- to the Plaintiff.

5) Applicant/Defendant filed PSCC Appeal No. 295 of 2014 before the Appellate Bench of the Small Causes Court. During pendency of the Appeal, the original Defendant passed away on 25 April 2021 and his legal heirs were brought on record. The Appeal is however dismissed by judgment and order dated 19 July 2023. The Appellate Court has also held that Plaintiff is the licensor and Defendant is the licensee in respect of the suit premises. Aggrieved by the decree passed by the Appellate Court, the legal heirs of the Defendants have filed the present Revision Application.

6) Mr. Jabbar the learned counsel appearing for the Applicants has submitted that the Trial and Appellate Courts have erroneously held the Plaintiff to be the owner and licensor in respect of the suit premises. That proceedings arise out of a family dispute between the two real brothers. That suit premises are acquired on 18 April 1974 for expanding family business of manufacturing industrial thermometers under the brand name M/s. Star Scientific which was established by the original Defendant. That all the four galas were purchased as a single unit for consideration of Rs.85,000/- which was paid by the Defendant. That by way of family/business arrangement for taxation and accounting purposes, purchase was made in the name of Dhanlaxmi (mother) and



Plaintiff (brother) who was merely a student having no independent source of income. That Plaintiff was in fact employed in the factory of the Defendant and was receiving a salary of Rs.6,000/- per month. That the Defendant was looking after family expenditure, out of which Rs.3,000/- was paid to the Plaintiff and Rs.3,000/- was paid to the mother.

7) Mr. Jabbar further submits that notwithstanding his claim of ownership in respect of the four galas (suit premises), Defendant purchased 50% share of mother-Dhanlaxmi vide registered Deed of Assignment and applied for membership with the society. When Defendant's application for registration as member was rejected by the society, the Deputy Registrar passed order dated 19 November 1993 setting aside the rejection and the Joint Dy. Registrar confirmed the order of Deputy Registrar directing admission of the Defendant as member of the society. That orders passed by the Registrar of Co-operative Societies have attained finality thereby proving ownership of the Defendant in respect of the suit premises.

8) Mr. Jabbar further submits that there is no proof of licensor-licensee relationship. That there is no written license agreement and there is absolutely no evidence of creation of license or payment of any monthly compensation. The amount paid under the family/business arrangement, treated as business expenditure, has been erroneously characterized as compensation payable in respect of the suit premises. That both the Courts have ignored long possession of the suit premises by the Defendant since 1974 belying the theory of licence. That both the



Courts have ignored statutory orders passed by the Registrar on 19 November 1993 and 15 April 1998 recognizing Defendant's ownership in respect of the suit premises. That Title Suit No. 3882 of 2023 is pending thereby indicating serious title disputes between the parties and in such circumstances, Small Causes Court could not have treated Plaintiff as the licensor and Defendant as licensee. That the Courts have recorded contradictory findings. That the Plaintiff has failed to discharge the burden of proving existence of licensor-licensee relationship. That there is no evidence of valid termination of license. He submits that the impugned orders passed by the Trial and the Appellate Courts suffer from serious jurisdictional error, as well as from the vice of non-consideration of material evidence. That the findings recorded by both the Courts are perverse. That family arrangement between the two brothers is erroneously treated as existence of licensor-licensee relationship. He relies on judgment of the Apex Court in **Ratnagiri Nagar Parishad Versus. Gangaram Narayan Ambekar and others**<sup>1</sup> in support of his contention that the initial burden is always on the Plaintiff to substantiate his cause with adequate pleadings and evidence and that the weakness in the defense cannot be the basis for grant of relief by shifting the burden on the Defendants. He prays for setting aside the orders passed by the Trial and the Appellate Courts.

9) Mr. Nirman Sharma the learned counsel appearing for the Respondent opposes the Revision Application submitting that no interference is warranted in the concurrent findings recorded by the Trial and the Appellate Courts. That the findings are well supported by the

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1 2020 (7) SCC 275



evidence on record and that the same cannot be treated as perverse in any manner. That the Defendant admits purchase of suit premises in the name of mother and the Plaintiff and he has failed to prove his defense that the purchase was only for convenience. That the defence of assignment of rights by the mother is not proved by stepping into the witness box by the Defendant. That the burden of proving the defence is on the Defendant. That there is ample evidence on record establishing payment of license fees by the Defendant to the Plaintiff. He relies on confirmation letter issued by the Defendant confirming balance of Rs.76,051/- as due and payable towards arrears of compensation in respect of the suit premises.

10) Mr. Sharma further submit that though the Defendant now strongly relies on pendency of civil suit before the City Civil Court as well as orders passed by the Dy. Registrar as well as case filed by the society against the Applicants for outstanding dues of the society, none of the said material was produced before the Trial or the Appellate Courts. That even in the present Civil Revision Application, new material is sought to be produced on record by filing of additional affidavit and the said material was never placed before the Trial and Appellate Courts.

11) Mr. Sharma further submits that the concurrent findings of Trial and Appellate Courts are based on specific admissions made by the Defendant about Plaintiff being the co-owner of the suit premises coupled with failure on the part of the Defendants to lead evidence to



prove the defence pleaded in the written statement. That evidence of Plaintiff of creation of licence has remained unchallenged.

12) Mr. Sharma relies on judgment of the Apex Court in the case of **Nagindas Ramdas Versus. Dalpatram Ichharam alias Brijram and others**<sup>2</sup> in support of his contention that Defendant cannot run away from judicial admissions given in the written statement. He relies on judgment in **Muddasani Venkata Narsaiah Versus. Muddasani Sarojana**<sup>3</sup> In support of his contention that the effect of non-cross of examination is that the statement of witness is not disputed. He relies on judgment of this Court in **MBK Enterprises and others Versus. Saidpur Jute Company Limited and others**<sup>4</sup> and of the Apex Court in **Hindustan Petroleum Corporation Limited Versus. Dilbahar Singh**<sup>5</sup> in support of his contention that a Court exercising revisionary jurisdiction cannot re-appreciate evidence or consider new evidence not relied upon by party before the Trial or Appellate Courts. Mr. Sharma prays for dismissal of the Revision Application.

13) Rival contentions of the parties now fall for my consideration.

14) The Applicants, who are legal heirs of the original Defendant, are aggrieved by the concurrent findings recorded by the Trial and the Appellate Courts holding Plaintiff to be licensor and the Defendant to be the licensee for ordering eviction of the Defendant from

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2 1974 (1) SCC 242

3 2016 (12) SCC 288

4 2024 SCC Online Bom 3529

5 2014 (9) SCC 78



the suit premises. It is the case of the Defendant that he is the owner of the entire suit premises or at least in respect of 50% share of mother in the suit premises and that therefore he cannot be branded as a licensee. It is also the case of the Applicants that licensor-licensee relationship otherwise does not exist between the parties.

15) Four industrial galas bearing Nos.13, 14, 15 and 16 are the 'suit premises'. The Defendant has not disputed the position that the suit premises have been purchased in the joint names of Plaintiff and mother-Dhanlaxmi. However, it was the case of the Defendant that such purchase in the name of Plaintiff and his mother was only for convenience purpose and that the entire consideration (Rs.85,000/-) was paid by the Defendant since the Plaintiff was a school going boy, not possessing the means to purchase the suit premises.

16) Plaintiff examined himself. On behalf of the Defendant, the Plaintiff was not cross examined properly. He did not give any suggestion in the cross-examination about absence of licensor-licensee relationship. The Defendant also did not give any suggestion about the Defendant being real purchaser of the suit premises or that the suit premises were purchased in the name of the Plaintiff and the mother by way of family arrangement. It would be apposite to reproduce the entire cross-examination conducted on behalf of the Defendant as under:-

At present I am 63 years old. In the year 1974, I was about 23 years old. My education qualification is S.S.C. In the year 1968, I have passed my S.S.C. examination. It is not true to say that the defendant had started Star Scientific factory in the year 1974. The defendant has been carrying out the business of Star Scientific from 1974 till today in the suit



premises. I was working as employee with Star Scientific since from 1968 till 1992. After year 1992, I had filed petition in the Bombay High Court claiming PPF from the defendant. It is true to say that after the order of Hon'ble High Court, I received dues towards provident fund from the defendant. It is not true to say that what was the dues paid by the defendant to me by virtue of my Employment with defendant. It is not true to say that defendant has made extra payment in addition to salary towards maintenance of myself and my family. It is not true to say that document at Sr. nos.4,5 &7 do not create right, title or interest in the suit premises or any part thereof. I do not know the date on which there was fire in the office of my advocate. I do not know whether my advocate had filed any police complaint or FIR about fire. I do not know whether my advocate has filed any affidavit regarding the destroy of documents by fire. It is not true to say that the suit file by me is malafide, false, vexatious and frivolous, it is not true to say that the evidence given by me in the affidavit is false and what I depose today is also false.

17) Thus, there is no challenge to the evidence of Plaintiff about induction of the Defendant as Licensee in respect of the suit premises, fixing of monthly compensation @ Rs.6,000/- per month and payment of compensation by Defendant to the Plaintiff. There is also no challenge to the confirmation letter issued by the Defendant on 19 February 1990 confirming outstanding amount of compensation @ Rs.76,051/- being due and payable towards arrears of compensation in respect of the suit premises. The Defendant has thus, virtually admitted the case of the Plaintiff about induction in the suit premises as a licensee.

18) The effect of non-conduct of cross-examination on a particular point raised by opposite party is that the statement of witness becomes undisputed. In **Muddasani Venkata Narsaiah** (supra) the Apex Court has dealt with issue of failure to conduct effective cross-examination and failure to put one's own version in the cross-



examination to the opponent and has held in paragraphs 15 and 16 of the judgment as under:

15. Moreover, there was no effective cross-examination made on the plaintiff's witnesses with respect to factum of execution of sale deed, PW 1 and PW 2 have not been cross-examined as to factum of execution of sale deed. The cross-examination is a matter of substance not of procedure one is required to put one's own version in cross-examination of opponent. The effect of non-cross-examination is that the statement of witness has not been disputed. The effect of not cross-examining the witnesses has been considered by this Court in Bhoju Mandal v. Debnath Bhagat. This Court repelled a submission on the ground that the same was not put either to the witnesses or suggested before the courts below. Party is required to put his version to the witness. If no such questions are put the Court would presume that the witness account has been accepted as held in Chuni Lal Dwarka Nath v. Hartford Fire Insurance Co. Ltd. 10

16. In Maroti Bansi Teli v. Radhabai, it has been laid down that the matters sworn to by one party in the pleadings not challenged either in pleadings or cross-examination by other party must be accepted as fully established. The High Court of Calcutta in A.E.G. Carapiet v. A.Y. Derderian has laid down that the party is obliged to put his case in cross-examination of witnesses of opposite party. The rule of putting one's version in cross-examination is one of essential justice and not merely technical one. A Division Bench of the Nagpur High Court in Kuwarlal Amritlal v. Rekhilal Koduram has laid down that when attestation is not specifically challenged and witness is not cross-examined regarding details of attestation, it is sufficient for him to say that the document was attested. If the other side wants to challenge that statement, it is their duty, quite apart from raising it in the pleadings, to cross-examine the witness along those lines. A Division Bench of the Patna High Court in Karnidan Sarada v. Sailaja Kanta Mitra has laid down that it cannot be too strongly emphasised that the system of administration of justice allows of cross-examination of opposite party's witnesses for the purpose of testing their evidence, and it must be assumed that when the witnesses were not tested in that way, their evidence is to be ordinarily accepted. In the aforesaid circumstances, the High Court has gravely erred in law in reversing the findings of the first appellate court as to the factum of execution of the sale deed in favour of the plaintiff.



19) Apart from not giving any suggestions to the Plaintiff on the issue of Defendant's ownership of the suit premises and about absence of licensor-Licencee relationship, the Defendant also did not lead his own evidence. Though Defendant pleaded the case of having purchased 50% share of mother in the suit premises, he did not prove the said defence. On the other hand, the Defendant gave admission in the written statement in paragraph 5 that he had paid Rs.36,000/- as arrears of rent to the Plaintiff and that he is liable to pay amount of Rs.500/- per month as rent in respect of the suit premises. If the Defendant was the owner of the suit premises, there was no reason for him to make any payment to the Plaintiff towards rent.

20) Thus, there are specific admissions in the written statement about purchase of suit premises in the name of the Plaintiff and mother-Dhanlaxmi and payment of compensation/rent to the Plaintiff by the Defendant. Thus, judicial admissions given by the Defendant binds him and stand on higher footing of evidentiary admissions as held by the Apex Court in **Nagindas Ramdas** (supra). Judicial admissions not only constitute waiver of proof, but they can also become foundation of rights of the parties. It is held in paragraph 27 of the judgment as under:

27. From a conspectus of the cases cited at the bar, the principle that emerges is, that if at the time of the passing of the decree, there was some material before the Court, on the basis of which, the Court could be prima facie satisfied, about the existence of a statutory ground for eviction, it will be presumed that the Court was so satisfied and the decree for eviction though apparently passed on the basis of a compromise, would be valid. Such material may take the shape either of evidence recorded or produced in the case, or, it may partly or wholly be in the shape of an express or implied admission made in the compromise agreement, itself. Admissions, if true and clear, are by far the best proof of the facts admitted. Admissions in pleadings or judicial



admissions, admissible under Section 58 of the Evidence Act, made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary admissions. The former class of admissions are fully binding on the party that makes them and constitute a waiver of proof. They by themselves can be made the foundation of the rights of the parties. On the other hand, evidentiary admissions which are receivable at the trial as evidence, are by themselves, not conclusive. They can be shown to be wrong.

21) In my view, therefore, the concurrent findings recorded by the Trial and the Appellate Courts regarding existence of licensor-licensee relationship based on various admissions given by the Defendant, do not warrant exercise of revisionary jurisdiction under Section 115 of the Code.

22) I am not impressed by the submissions made on behalf of the Applicants that payment of Rs.6,000/- per month was only by way of family arrangement. There are several admissions on the part of the Defendant about payments being made towards compensation/rent to the Plaintiff. Additionally, Defendant had given confirmation statement for Income Tax purposes on 19 February 1990 showing the amount of Rs.76,051/- towards arrears of rent in respect of the suit premises. Thus, it cannot be contended that the Trial and the Appellate Courts mischaracterized the payments made by the Defendant as rent/monthly compensation. Defendant did not step into the witness box to prove his case of payments being made only for income tax purposes and not towards rent/monthly compensation.

23) Mere pendency of title suit by the Defendant cannot be a ground for not inferring in the existence of licensor-licensee relationship between the parties. Inquiry into licensor-licensee relationship was



required to be conducted by taking into consideration the evidence produced in L.E. & C. Suit No.269/322 of 2000 and the inquiry could not have been kept pending forever till decision of Title Suit No.3882 of 2003/BCCC Suit No.7450 of 2003.

24) It is sought to be urged on behalf of the Applicants that the Plaintiff did not discharge the burden of proof of establishing creation of license and depended only on the alleged weaknesses in the defences of the Defendants. Reliance is placed on judgment of the Apex Court in ***Ratnagiri Nagar Parishad*** (supra). The contention, however, does not deserve acceptance in the facts of the present case. No doubt, the initial burden of proof is on the Plaintiff to substantiate his case of existence of licensor-licensee relationship. The burden is discharged by producing proof of payment of license fees/compensation by the Defendant. It therefore cannot be contended that the Plaintiff relied only upon weaknesses in the defence of the Defendant for proving his case.

25) The Applicants have also strenuously relied upon orders passed by Registrars of Cooperative Societies for the purpose of demonstrating that the Defendant is the actual owner in respect of the suit premises. However, the said orders were not produced in evidence before the Trial Court. The documents, which are directly sought to be produced before this Court cannot be a reason for exercising revisionary jurisdiction under Section 115 of the Code. Reliance by Mr. Sharma on judgment of this Court in ***MBK Enterprises*** (supra) in this regard is apposite, in which this Court has held, after following the ratio of the



judgment in *Hindustan Petroleum Corporation Limited Versus. Dilbahar Singh*, in paragraph 68 as under:

68. The allegations against defendants are of twin nature. Firstly, plaintiff alleged acts of waste contrary to the provisions of clause (o) of Section 108 of the Transfer of Property Act, which is a ground for eviction under Section 13(1)(a) of the Bombay Rent Act. Secondly, plaintiff also accused Defendants of putting up of structures of permanent nature without its consent thereby attracting a ground under Section 13(1)(b) of the Bombay Rent Act. Since both the allegations are interconnected, it would be apposite to consider both the allegations together. Before delving deeper into the grounds under Sections 13(1) (a) and 13(1)(b) of the Bombay Rent Act, it must be noted that there are findings of fact recorded by the trial and the appellate court after appreciating the evidence on record. The applicants have invoked revisionary jurisdiction of this Court under Section 115 of the Code and this Court is not expected to exercise power of the appellate court in disguise as has been held by the Supreme Court in *Keshardeo Chamria v. Radha Kissen Chamria* 25 and *Masjid Kacha Tank, Nahan v. Tuffail Mohammed* 26. In this connection reliance of Mr Ankhad on the judgment of the Supreme Court in *Gandhe Vijay Kumar case 12* is also apposite. By relying on the Constitution Bench judgment in *Hindustan Petroleum Corpn. Ltd. v. Dilbahar Singh* 13, the Supreme Court has held in *Gandhe Vijay Kumar case 12* in paras 2 and 3 as under : (SCC pp. 577 and 578, paras 2 and 3)

2. We are afraid, the High Court has misdirected itself and exceeded its jurisdiction. In revisional jurisdiction, the court is expected to see only whether the findings are illegal or perverse in the sense that a reasonably informed person will not enter such a finding. For proper guidance, it would be appropriate to refer to a recent Constitution Bench judgment in *Hindustan Petroleum Corpn. Ltd. v. Dilbahar Singh* 13, at paras 30, 31 and 43: (SCC pp. 97, 98, 101 and 102, paras 30, 31 and 43)

"30. We have already noted in the earlier part of the judgment that although there is some difference in the language employed by the three Rent Control Acts under consideration which provide for revisional jurisdiction but, in our view, the revisional power of the High Court under these Acts is substantially similar and broadly such power has the same scope save and except the power to invoke revisional jurisdiction suo motu unless so provided expressly. None of these statutes confer on revisional authority the power as wide as that of the appellate court or appellate authority despite such power being wider than that provided in Section 115 of the Code of Civil Procedure. The provision under consideration does not permit the High Court to invoke the revisional jurisdiction as the cloak of an appeal in disguise. Revision



does not lie under these provisions to bring the orders of the trial court/Rent Controller and the appellate court/appellate authority for rehearing of the issues raised in the original proceedings.

31. We are in full agreement with the view expressed in Sri Raja Lakshmi Dyeing Works v. Rangaswamy Chettiar 27 that where both expressions "appeal" and "revision" are employed in a statute, obviously, the expression "revision" is meant to convey the idea of a much narrower jurisdiction than that conveyed by the expression "appeal". The use of two expressions "appeal" and "revision" when used in one statute conferring appellate power and revisional power, we think, is not without purpose and significance. Ordinarily, appellate jurisdiction involves a rehearing while it is not so in the case of revisional jurisdiction when the same statute provides the remedy by way of an "appeal" and so also of a "revision". If that were so, the revisional power would become coextensive with that of the trial court or the subordinate tribunal which is never the case. The classic statement in Dattopant Gopalvarao Devakate v. Vithalrao Maruthirao Janagaval 28 that revisional power under the Rent Control Act may not be as narrow as the revisional power under Section 115 of the Code but, at the same time, it is not wide enough to make the High Court a second court of first appeal, commends to us and we approve the same. We are of the view that in the garb of revisional jurisdiction under the above three rent control statutes, the High Court is not conferred a status of second court of first appeal and the High Court should not enlarge the scope of revisional jurisdiction to that extent.

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43. We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the first appellate court/first appellate authority because on reappraisal of the evidence, its view is different from the court/authority below. The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the court/authority below is according to law and does not suffer from any error of law. A finding of fact recorded by court/authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself as to the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness,



legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to reappreciate or reassess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity."

These principles hold good generally for exercise of revisional power.

3. There is no dispute with respect to the landlord tenant relationship. The bona fide requirement also has been concurrently found by the Rent Controller as well as by the appellate authority. The High Court should not have ventured to look into the evidence as if in a first appeal and entered a different finding, though another finding might also be possible. Merely because another view is possible in exercise of the revisional jurisdiction, the High Court cannot upset the factual findings.

26) Thus, while exercising revisionary jurisdiction, this Court is expected to examine correctness of the findings on the basis of material produced before the Trial and Appellate Courts and this Court cannot consider new material for arriving at findings different than the ones recorded by the Trial and the Appellate Courts. Defendant's induction as licensee is proved before the Small Causes Court. If Defendant/ his heirs are in a position to prove their title in respect of the suit premises or part thereof in the title suit, they can seek recovery of possession on the strength of claim of title. The Small Causes Court was not expected to wait endlessly for the Defendant to prove his claim of title. Before the Small Causes Court no attempt was made by the Defendant to prove title and on the contrary, he gave admissions of payment of rent/monthly compensation. He made no attempt to explain his own document in the form of confirmation letter issued to the Plaintiff for income tax purposes in respect of outstanding rent/compensation. The remit of



inquiry before the Small Causes Court is limited. It is not expected to conduct an inadequate inquiry into title of the premises. It conducts inquiry only into existence of licensor-licensee relationship for assuming jurisdiction. Existence of landlord/tenant or licensor-licensee relationship is the jurisdictional fact. If the Defendant was to quell Plaintiff's case of creation of licence, the Small Causes Court would have lost jurisdiction. However, in the present case, far from making any attempt to prove his case of ownership, Defendant went on making admissions of payment of rent/compensation in respect of suit premises and thereby acquiesced in the jurisdiction of the Small Causes Court for deciding the issue of his eviction.

27) Also of relevance is the fact that Defendant's title suit was pending initially before this Court and now pends before the City Civil Court since the year 2003. In the last 23 long years, the Defendant/ his heirs ought to have secured declaration of title in respect of the suit premises or in respect of part thereof (50% mother's share). Defendant/his heirs are armed with orders passed by the Registrar of Cooperative Societies allegedly directing grant of membership by the Society. They also rely on registered Deed of Conveyance allegedly executed by the mother in respect of 50% share in the suit premises. Defendant did not produce and prove those documents before the Small Causes Court. For some incomprehensible reasons, he shied away from the witness box and did not properly cross-examine the Plaintiff by giving specific suggestion of ownership of the suit premises, and in any case, about purchase of mother's 50% share by him just before filing of the suit. He made no attempt to lead additional evidence before the



Appellate Court. In exercise of revisional jurisdiction, this Court finds itself helpless, and without any option, but to uphold the orders passed by the Small Causes Court and by its Appellate Bench. It is however clarified that the title suit filed by the Defendant/his heirs shall be decided uninfluenced by the findings recorded by the Trial, Appellate and this Court. In case Applicants are able to prove title in respect of the suit premises/part thereof (mother's share), they can secure back possession thereof from the Plaintiff. However as of now, they have no option but to hand over possession of the suit premises to the Plaintiff.

28) Considering the overall conspectus of the case, I am of the view that no interference is warranted in the concurrent findings recorded by the Trial and the Appellate Courts. The Revision Application is devoid of merits. It is accordingly **dismissed** without any order as to costs.

**[SANDEEP V. MARNE, J.]**