A 646

SMT. M.M. AMONKAR & OTHERS

v.

B DR. S.A. JOHARI

Febraury 21, 1984

C [V.D. TULZAPURKAR AND SABYASACHI MUKHARJI, JJ.]

Constitution of India, 1950, Article 227 Scope of—Justification of interference with a concurrent finding of fact recorded by both the lower courts in respect of the nature of occupation of premises by the lessee and in favour of the lessor by the High Court—Whether the lessee of the cabin a "protected licensee under the Bombay Rent Act (No. 57 of 1947) as amended by the Maharashtra Act XVII of 1973.

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The Respondent original plaintiff— a doctor by profession was in occupation of a small cabin (admeasuring approximately 175 sq ft) which is a part of the premises of Dr. Amonkar hospital of which the appellants are the proprietors. The Life Insurance Corporation of India is the owner of the building. The appellants threatened the Respondents to evict him after issuing a notice dated March 20, 1973 informing the Respondent that his attachment as Honorary Surgeon was nolnger required with effect from 1-4-1973 and that he should make his own arrangements for his private consultation. The Respondent filed a suit in the Small Causes Court of Bombay seeking a declaration that he was a "protected lincensee" (having become a deemed tenant) of the suit premises under section 15A of the Bombay Rent Act (Act 57 of 1947) as amended by the Maharashtra Act XVII of 1973 and for injunction restraining the appellant—defendants from taking forcible possession of the suit premises and or disturbing or interfering with his use and employment thereof otherwise than in due course of law. The suit was resisted by the appellant—defendants on three grounds: (a) that the cabin was never given to the respondent—defendant on leave and licence basis, that he was never in exclusive use and occupation thereof but the user of the cabin was given to him because of his attachment as Honorary Surgeon to Dr. Amonkar hospital through the good offices of one Dr. Rawalia and after obtaining a writing an stamp paper reflecting the true nature and character of the arrangement between the appellants and the Respondent plaintiff; (b) that the cabin in question was not "premises" within the meaning of Section 5(8)(b) of the Rent Act, in as much as the same could not be said to have been given on licence "separately" because the respondent plainiff was permitted the user thereof only for 2-/2 hours in the evening on week days between 5 P.M. and 7.30 PM. and for the rest of the time it was being used by the hospital staff and that one of the key's of that cabin always remained with the staff of the hospital and hence

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disentitling to any protection of the Rent Act, and (c) that the cabin in question being admittedly a room in the hospital fell within the exclusionary part of the definition of the "licensee" given section 5(4A) and as such was outside the protection conferred on licensees by section 15A of the Rent Act.

The appellants also filed an Ejection Application against the respondent plaintiff seeking his eviction from the suit premises under section 41 of the Presidency Small Causes Courts Act on the ground that the respondent's right to occupy the suit cabin had come to an end along with the termination of his attachment as Honorary Surgeon to Dr. Amonkar hospital. The respondent plaintiff resisted the said suit. Both the suits were therefore heard together and common evidence recorded. On an appreciation of the oral and documentary evidence and the surrounding circumstances, the trial court came to the conclusion that the user of the suit cabin had been permitted to the respondent—plaintiff not on leave and licence basis but because of his attachment as Honorary Surgeon to Dr. Amonkar Hospital and that Ex. No. 1 which was signed by him after fully realising its implications, was a genuine writing reflecting the true nature of the arrangement between the parties and so as such the respondent plaintiff was not entitled to the protection of section 15A of the Rent Act and that with the termination of his attachment as Honorary Surgeon to Dr. Amonkar hospital his right to occupy the suit cabit came to an end. The Trial Judge decreed the suit. In appeal preferred by the respondent—plaintiff, the Appellate Bench of the Small Causes Court on reappraisal of the entire material on record confirmed the findings of the trial court both on the factual and on legal issued and dismissed the appeal. The respondent—plaintiff when approached the High Court under Article 227 of the Constitution the High Court interferred with the concurrent findings of fact found by the two lower courts and reversed the decisions both on the factual issue and the two legal issues. Hence the appeal after obtaining the special leave of the Court.

Allowing the appeals, the Court

HELD: 1. The High Court was not right in reversing the concurrent finding of fact recorded by both the courts below and even on merits, the High Court Judgment cannot be sustained. [663 C]

2.1. The opinion of the High Court that there were two disturbing features revealed in the respective proceedings and judgments of the courts below which were suggestive of non-judicial approach, some bias and partiality (in favour of the appellant defendants and against the respondent—plaintiff) on their part which necessitated a full and unrestricted exercise of its power of superintendence by going to the extent of reappreciating the evidence in depth as if it were a first Appellate Court was not correct. [653 F-G]

The comments of the High Court that the rejection of an application to recall one of the witnesses viz. Dr. Rawalia and to direct him to produce his Income Tax

A Returns by the trial court on 18-10-1976 was a disturbing feature suggestive of non-judicial approach, some bias or some partiality shown by the Trial Judge, would have had been simply dismissed without giving any reason but the learned trial Judge passed a lengthy order giving three reasons for the rejection of the application: (a) that vague averments were made in the application about the receipt of the information regarding Income Tax Returns of Dr. Rawalia on 8th October, 1976 without the occasion for receiving the information or the source of information being indicated and that when the Court made a querry in that behalf his counsel was not willing to give particulars or disclose the source of information and it was, therefore, difficult to believe that the respondent—plaintiff came in possession of the said information after the cross-examination of the witness was over and after the closure of appellant—defendants' case; (b) that under section 138(1)(b) of the Income Tax Act, 1961 the respondent—plaintiff could have and should have obtained the necessary information or material from the Commissioner of Income-tax by making an application in the prescribed form and since he had not done so it would not be proper to help him to get the information through the court; in other words, if he had attempted and failed to get the information by following the prescribed procedure the court could have helped him; and (c) that the Court's power to recall and examine any witness at any stage of the suit under Order XVIII Rule 17 of CPC on which strong reliance was placed by counsel for the respondent—plaintiff was to be exercised in exceptional circumstances and no exceptional circumstance had been made out by the respondent—plaintiff inasmuch as these documents would have become available to him before he started the witness's cross-examination. May be in the exercise its discretion another Court might have taken a different view and allowed the application. But unless the reasons given by the learned trial Judge could be said to be moon-shine, flimsy or irrational the rejection of the application cannot be dubbed as suggestive of non-judicial approach or bias or partiality on his part. It is also possible that the reasons for giving a ruling on a point or for rejecting an application may be wrong or disclose a non-judicous exercise of discretion and open to correction in appeal, but non motive of non-judicial approach or bias or partiality could be attributed unless the reason given are moon-shire or so flimsy or irrational that there are unreal. Considered dispassionately, such a thing could never be said about the reasons given by the trial Judge for rejecting the application. In any case, the rejection of the application could not be regarded as having stemmed from any oblique motive or purpose. [656B-H, 657 A-C]

Further, the so called disturbing feature noted by the High Court in the Judgment of the First Appellate Court is so innocuous and inconsequential that it could hardly afford any justification to re-appreciate the whole evidence as done by it. On the contrary, the broad features emerging from the evidence on record clearly support the appellant—defendants' case that the user of the suit cabin was allowed to the respondent—plaintiff not on leave and licence basis but because of his attachment as Honorary surgeon to Dr. Amonkar hospital. [663 B-C]

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 104-105 of 1981

Appeals by Special leave from the Judgment and Order dated

the 18th August, 1980 of the Bombay High Court in Writ Petition Nos. 30 and 115 of 1979. A

V. M. Tarkunde, P. H. Parekh, Mrs. Manik Karanjewal and *Miss. Indu Malhotra* for the Appellants. B

Anil Dewan, Dalveer Bhandari and *R.S. Yadav* for the Respondent.

The Judgment of the Court was delivered by C

TULZAPURKAR, J. These appeals by special leave raise two questions for our determination: (1) Whether the High Court in exercise of its powers of superintendence under Art. 227 was justified in interfering with a concurrent finding of fact recorded by both the lower Courts in favour of the appellants?. and (2) Whether the respondent was a protected licensee in respect of the suit premises under the Bombay Rent Act (No. 57 of 1947) as amended by the Maharashtra Act XVII of 1973? D E

This unfortunate litigation between eminent medical practitioners of Bombay has been hotly contested before us since it relates to professional accommodation of which there is great dearth in that city. The accommodation in question consists of a small cabin admeasuring 15'-6" x 11'-2" (approximately 175 sq. ft.) which is a part of the premises of Dr. Amonkar Hospital located on the fourth floor of Bombay Mutual Terrace at 534, Sandhurst Bridge, Bombay, of which one Dr. M.D. Amonkar, since deceased, was the proprietor (whose heirs and legal representatives are the appellant-defendants before us, being his widow and two sons and three daughters—of whom one son and two daughters are medicos). F G

Dr. Johari (the respondent-plaintiff) an M.B.B.S. of Bombay, F.R.C.S. of London and Edinburough and Honourary Surgeon attached to G.T. Hospital and Bombay Hospital, filed a suit (R.A. Suit H

No. 779/2893 of 1973) in the Small Causes Court at Bombay seeking a declaration that he was a "protected licensee" (having become a deemed tenant) of the suit premises under s. 15A of the Bombay Rent Act (No. 57 of 1947) as amended by the Maharashtra Act XVII of 1973 and for injunction restraining the appellant—defendants from taking forcible possession of the suit premises and or disturbing or interfering with his use and enjoyment thereof otherwise than in due course of law. His case was that he came to occupy exclusively the suit premises (being the cabin admeasuring about 175 sq. ft. with the facility of using the adjacent common waiting room together with the facility of water and electricity) on Ist May, 1970 on leave and licence basis under an oral agreement with late Dr. Amonkar on payment of monthly compensation of Rs. 201 for doing his private consultation surgical practice. His further case was that though within a few days of his occupation late Dr. Amonkar had obtained from him a writing purporting to state that he was attached as an Honourary Surgeon to Dr. Amonkar Hospital and was, therefore, allowed to have his private consultation practice in the premises, that he had agreed to bear and pay rateably the expenses of telephone, use of furniture, etc. and that he was neither a tenant nor a licensee, the said writing had been obtained from him merely as a safeguard for Dr. Amonkar against a possible objection that might be raised by the Life Insurance Corporation the landlords of the building, and was not to be acted upon. According to him, he had cordial relations with late Dr. Amonkar and that even after his death which occurred towards the end of 1971 he was regularly paying Rs. 201/- per month to his heirs till January 1973 but since threats of forcible dispossession were held out to him by the appellant-defendants, particularly by appeallant-defendant No. 3 Dr. Suman Gaitondey (the married daughter of the deceased) on her return to Bombay from Calcutta, and since by a notice dated 20th March, 1973 he was informed that his attachment as honourary Surgeon was no longer required with effect from 1-4-1973 and that he should make his own arrangements for his private consultation, he was forced to file the suit seeking reliefs of a declaration and injunction mentioned above.

The suit was resisted by the appellant—defendants on three grounds: (a) that the cabin was never given to the respondent—plaintiff on leave and licence basis as alleged by him; that he was never in exclusive use and occupation thereof but the user of the cabin was given

to him because of his attachment as Honourary Surgeon to Dr. Amonkar Hospital, through the good offices of one Dr. Rawalia; that the writing on the stamp paper of Rs. 1.50 bearing date 4th May, 1970 signed by the respondent—plaintiff reflected the true nature and character of the arrangement between the parties; it was emphatically denied that the said writing was obtained by late Dr. Amonkar for the purpose or motive suggested by the respondent—plaintiff or was not intended to be acted upon, (b) that the cabin in question was not "premises" within the meaning of s. 5 (8) (b) of the Act, inasmuch as the same could not be said to have been given on licence 'separately' because the respondent—plaintiff was permitted the user thereof only for 2-1/2 hrs. in the evening on week days between 5.00 p.m. to 7.30 p.m. and for the rest of the time it was being used by the hospital staff and that one of the keys of that cabin always remained with the staff of the hospital and hence the plaintiff was not entitled to any protection of the Rent Act; and (c) that the cabin in question being admittedly 'a room in the hospital' fell within the exclusionary part of the definition of the licensee' given in s. 5 (4A) and as such was outside the protection conferred on licensees by s. 15A of the Act.

It may be stated that while the aforesaid suit was perding the appellant—defendants on their part filed an eviction petition being Ejectment Application No. 259/E of 1976 against the plaintiff—respondent seeking his eviction from the suit premises under s. 41 of the Presidency Small Causes Courts Act on the ground that the plaintiff's right to occupy the suit cabin had come to an end alongwith the termination of his attachment as Honourary Surgeon to Dr. Amonkar Hospital and the plaintiff resisted the said eviction on the ground that he was a protected licensee under the Bombay Rent Act as amended by the Maharashtra Act XVII of 1973 and was, therefore, not liable to be evicted therefrom. The two proceedings were heard together and common evidence was recorded in the declaratory suit being R.A. No. 779/2893 of 1973.

It is clear that on the basis of the rival pleadings of the two parties in the two proceedings before the Small Causes Court principally three issues arose for determination, namely, (1) what was the true nature of the arrangement between the parties regarding the user of the suit cabin by the plaintiff, whether the plaintiff's user of the cabin was on leave and licence basis on payment of monthly compensation or it

was on account of his attachment as Honourary Surgeon to Dr. Amonkar Hospital? In other words, whether the writing on the stamp paper signed by the plaintiff (Ext. No. 1) was a genuine document reflecting the true nature of the arrangement between the parties? (2) whether the suit cabin was not 'premises' within the meaning of s. 5 (8)(b) of the Act? and (3) whether the suit cabin was 'a room in in the hopital' falling within the exclusionery part of the definition of 'licensee' under 5 (4A) and, therefore, outside the protectionc ontemplated by s. 15A of the Act? It is obvious that the first issue raised purely a question of fact, the determination whereof depended on appreciation of the evidence led by the parties before the Court while the other two issues raised questions of law—rather mixed questions of law and fact.

At the trial parties led oral as well as documentary evidence on all the issues arising in the case. The evidence on the side of the respondent—plaintiff consisted only of his oral testimony, during the course of which he asserted that the user of the cabin had been given to him by late Dr. Amonkar on leave and licence basis on payment of monthly compensation. On the side of the appellant-defendants the oral testimony consisted of depositions of two witnesses (i) Dr. D.M. Amonkar (defendant No. 2) and (ii) Dr. Rawalia and the documentary evidence consisted of two writings obtained by late Dr. Amonkar—one from the respondent—plaintiff and the other from Dr. Rawalia. Ext. No. 1 is a writing on a stamp paper of Rs. 1.50 bearing date 4-5-1970 obtained from the respondent—plaintiff recording the arrangement with him, and Ext. No. 2 is a writing on a stamp paper dt. 23-4-1962 signed by Dr. Rawalia recording the arrangement with him. Both Exts. No. 1 and No. 2 are identical in terms and appears that long before respondent—plaintiff was allowed the use of the suit cabin, Dr. Rawalia had been allowed the use of another cabin in the hospital premises by late Dr. Amonkar on the same terms. Each writing signed by the occupant in terms states: "I am an Hon. Surgeon to Dr. Amonkar Hospital. I am allowed to practice may private consultation in the premises. I am neither licensee nor subtenant. I have to bear rateably the expenses incurred towards telephone, electricity, use of furniture and instruments". Dr. Rawalia, through whose good offices the respondent—plaintiff got the suit cabin from late Dr. Amonkar fully supported the appellant—defendants' case that late Dr. Amonkar had permitted the respondent—plain-

tiff to make use of the suit cabin because of his attachment as Honorary Surgeon to Dr. Amonkar Hospital. On an appreciation of the oral and documentary evidence and the surrounding circumstances, the trial Court came to the conclusion that the user of the suit cabin had been permitted to the respondent—plaintiff not on leave and licence basis but because of his attachment as Honorary Surgeon to Dr. Amonkar Hospital and that Ext. No. 1 which was signed by him after fully realising its implications, was a genuine writing reflecting the true nature of the arrangement between the parties and as such the plaintiff was not entilted to the protection of s. 15A of the Rent Act and with the termination of his attachment as Honourary Surgeon to Dr. Amonkar Hospital his right to coccupy the suit cabin came to end. The trial Court also decided the legal issues in appellant—defendants' favour with the result that the respondent—plaintiff's declaratory suit was dismissed and the ejectment application of the appellant—defendants was decreed. In appeal preferred by the respondent—plaintiff the Appellate Bench of the Small Causes Court on a re-appraisal of the entire material on record confirmed the findings of the trial Court on the factual issue as also on the legal issues. The appeal was dismissed and the ejectment decree passed by the Trial Court in favour of the appellant—defendants was confirmd.

Against the dismissal of his declaratory suit and the ejectment decree passed in E.A. No. 259/F of 1976 the respondent—plaintiff approached the High Court under Art. 227 of the Constitution by preferring two proceedings —Special Civil Application No. 30 of 1979 and Writ Petition No. 115 of 1979 both of which were disposed of by the High Court by common judgment rendered on 18th August, 1980. The High Court was of the opinion that there were two disturbing features revealed in the respective proceedings/judgments of the Courts below which were suggestive of non-judicial approach, some bias and partiality (in favour of the appellant—defendants and against the respondent—plaintiff) on their part which necessitated a full and unrestricted exercise of its power of superintendence by going to the extent of re-appreciating the evidence in depth as if it were a first Appellate Court; and after briefly indicating what it felt were the two disturbing features, the High Court re-appreciated the entire evidence fully and in depth and came to the conclusion that the user of the suit cabin was given to the respondent—plaintiff on leave and licence basis and the writing Ext. No. 1 did not represent the real state of affairs as far as the respondent—plaintiff's right to use the suit cabin was concerned and that the same had been taken by late Dr. Amonkar only

A for his protection against his own landlord, namely, Life Insurance Corporation. The High Court also negatived the findings recorded by the Courts below on the two legal issues and held that the suit cabin was "premises" within the meaning of s. 5 (8) (b) of the Bombay Rent Act, the same having been given on licence 'separately' to the respondent—plaintiff and that the suit cabin was not 'a room in the hospital' B and as such the respondent—plaintiff could be and was a 'protected licensee' entitled to claim protection under s. 15A of the Act. The High Court's interference with the concurrent finding of fact recorded by the two Courts below on the factual issue as also its conclusions on the two legal issues are assailed before us in the instant appeals.

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The first contention urged by counsel for the appellant—defendants is that the question whether the user of the suit cabin had been allowed to the respondent—plaintiff on leave and licence basis or because of his attachment as Honourary Surgeon to Dr. Amonkar Hospital and whether the writing Ext. No. 1 was a genuine document D and reflected the true nature of the arrangement between the parties or not was purely a question of fact depending upon the evidence led by the parties and it was on an appreciation of the oral and documentary evidence and the surrounding circumstances that both the lower Courts had come to the conclusion that the respondent—plaintiff's occupation of the suit cabin was not on leave and licence basis but E on account of his attachment as an Honourary Surgeon to Dr. Amonkar Hospital and that the writing Ext. No. 1 was not any camouflage or facade obtained by late Dr. Amonkar for the purpose suggested by the respondent—plaintiff but was a genuine document which reflected the real arrangement between the parties and such a concurrent finding of fact, unless it was perverse, which it was not because there was F ample evidence on record to support it, could not be interfered with by the High Court under Art. 227. Counsel further urged that the justification given by the High Court for interfering with such concurrent finding of fact was unsustainable inasmuch as the so-called two disturbing features were not really any distrubing features much less were they suggestive of any non-judicial approach or some bias or partiality G on the part of the lower Courts in favour of the appellant—defendants and against the respondent—plaintiff. Counsel strongly urged that the suggestion of non-judicial approach or of bias or of partiality on the part of the learned single Judge and the two learned Judges of the H Appellate Bench of the Court of Small Causes was unwarranted, uncalled for and ought not to have been made. Even on merits the High

Court's view on the factual issue was wrong. It was also contended that evidence clearly showed that the suit cabin had not been 'separately' given to the respondent—plaintiff and in any case it was 'a room in the hospital' and as such the respondent—plaintiff was not entitled to claim any protection of the Bombay Rent Act. On the other hand, counsel for the respondent—plaintiff supported the High Court's findings on all the issues and urged that there was no reason to disturb the judgment under appeal.

This necessitates a close scrutiny of the two disturbing features—one pertaining to the proceeding before the trial Court and the other pertaining to the judgment of the Appellate Bench—which according to the High Court made it to undertake a re-appreciation of the entire evidence in depth as if it were a first appellate Court. In the trial Court after examining their two witnesses the appellant—defendants closed their case on 18th September, 1976 and the case was fixed for arguments on 4th of October, 1976, on which day, however, arguments could not be heard and the matter was adjourned. It appears that on 18th September, 1976 during the course of his cross-examination it was suggested to Dr. Rawalia that in his Income-Tax Returns he had been showing payment of Rs. 225 per month to Dr. Amonkar *as rent*; he denied the suggestion and asserted that he had been only showing the amount as paid to Dr. Amonkar. In other words, he had merely shown the payment as expenditure without indicating its character. On 12th of October, 1976 the respondent—plaintiff made an application stating that on 8th October, 1976, he had come to know that Dr. Rawalia had filed his Income Tax Returns showing that he had paid Rs. 1870 as rent for 1972-73, Rs. 2250 as rent for 1973-74 and Rs. 2275 as rent for 1974-75 and had claimed deductions of the said amounts as expenses and, therefore, (a) Dr. Rawalia be recalled for further cross—examination and (b) that his Income Tax Returns for the said three years be got produced through a witness summons or letter of request being issued to the Commissioner of Income Tax, Bomay. Obviously, the application was made with a view to confront Dr. Rawalia by his own Income Tax Returns which he had filed for proving (i) that Dr. Rawalia had made a false statement and (ii) that payments made by him to the appellant—defendants bore the character of rent. It cannot be disputed that the aspects sought to be proved by recalling Dr. Rawalia and by getting his Income Tax Returns produced were relevant to the issue involved in the case, though it is well-settled that a particular nomenclature given to payments made by a party is not conclusive or decisive of the matter. The application was

dismissed by the learned trial Judge on 18th of October, 1976 and according to the High Court this rejection of the application was a disturbing feature suggestive of a non-judicial approach, some bias or some partiality in favour of the appellant—defendants on the part of the learned trial Judge. In our view the comments of the High Court in the matter of rejection of this application would have had some force if the application had been simply dismissed without giving any reasons but the learned trial Judge passed a lengthy order giving three reasons for the rejection of the application: (a) that vague averments were made in the application about the receipt of the information regarding Income Tax Returns of Dr. Rawalia on 8th October, 1976 without the occasion for receiving the information or the source of information being indicated and that when the Court made a querry in that behalf his counsel was not willing to give particulars or disclose the source of information and it was, therefore, difficult to believe that the respondent—plaintiff came in possession of the said information after the cross—examination of witness was over and after the closure of appellant—defendants' case; (b) that under s. 138 (1) (b) of the Income Tax Act, 1961 the respondent—plaintiff could have and should have obtained the necessary information or material from the Commissioner of Income Tax by making an application in the prescribed form and since he had not done so it would not be proper to help him to get the information through the Court; in other words, if he had attempted and failed to get the information by following the prescribed procedure the Court could have helped him; and (c) that the Court's power to recall and examine any witness at any stage of the suit under Ozrder XVIII Rule 17 of C.P.C., on which strong reliance was placed by Counsel for the respondent—plaintiff was to be exercised in exceptional circumstances and no exceptional circumstance had been made out by the respondent—plaintiff inasmuch as these documents would have become available to him before he started the witness's cross—examination. May be in the exercise of its discretion another Court might have taken a different view and allowed the application. But unless the reasons given by the learned trial Judge could be said to be moon-shine, flimsy or irrational the rejection of the application cannot be dubbed as suggestive of non-judicial approach or bias or partiality on his part. It is also possible that the reasons for giving a ruling on a point or for rejecting an application may be wrong or disclose a non-judicious exrcise of discretion and open to correction in appeal, but no motive of a non-judicial approach or bias or partiality could be attributed unless, as we have said above, the reasons given are moon shine or so flimsy or irrational that they are unreal. Considered dispassionately, such a thing can never be said

about the reasons given by the trial Judge for rejecting the application. It is true that the appellate Court has not dealt with this point though in ground No. 27 of the Memo. of Appeal a point had been taken that the application had been wrongly rejected but in all probability it was not argued by counsel otherwise the appellate Court would have dealt with it. In the High Court no assertion was made that the point was actually argued or pressed before the Appellate Bench but it was merely urged that although a complaint against the rejection of the application had been made in Ground No. 27 of the Memo.of Appeal the appellate Court has not dealt with it. This also shows that the rejection was not regarded by the respondent—plaintiff or his counsel before the appellate Court as any serious or disturbing feature. In any case, as stated earlier, the rejection of the application could not be regarded as having stemmed from any oblique motive or purpose. This so—called disturbing feature, therefore, did not afford any justification to the High Court to undertake a re-appreciation of the entire evidence in depth for reversing a concurrent finding of fact recorded by the two Courts below.

Turning to the judgment of the Appellate Court, the so-called disturbing feature noted by the High Court, is, in our view, so innocuous and inconsequential that it could hardly afford any justification to re-appreciate the whole evidence as done by it. It appears that during the hearing of the appeal after supporting the trial Court's finding on the factual issue as also the findings on the legal issues and pressing for their acceptance, counsel for the appellant—defendants put forward an alternative last submission that even proceeding on the assumption that an oral licence had been created in respondent—plaintiff's favour by late Dr. Amonkar, as alleged by him, the material on record showed that the said licence did not subsist on the relevant date, namely, 1-2-1973, mentioned in s. 15A and, therefore, he was not entitled to any protection under the Act, and in that behalf an averment made by the respondent—plaintiff in paragraph 4 of his complaint dated 24-3-1973 addressed to the Inspector of Police, Gamdevi Police Station was relied, which averment runs thus: "Ever since there has been a publicity in the newspaper that the Govt. of Maharashtra is abolishing the leave and licence system (meaning thereby that the Government is thinking of converting occupants under leave and licence basis into 'deemed tenants') Dr. (Miss) Usha Amonkar and Dr. D.M. Amonkar are asking him to vacate the premises", and the contention was that since the Bill amending the Bombay Rent Act (subsequently numbered as Act XVII of 1973) had been introduced or published in

August, 1972 the respondent—plaintiff's licence, on his own aforesaid averment, was not subsisting and had come to an end long before 1-2-1973. The appellate Court accepted this argument on the footing that the Bill had been introduced (not in the Assembly) in newspapers for information to the public in August 1972 and held that the respondent—plaintiff's licence, if any, was not subsisting on Ist of February, 1973 and he was not entitled to protection even if his case were assumed to be true. According to the High Court such a conclusion drawn by the appellate Bench was an impossible one having regard to the pleadings and the evidence on record, for, according to the High Court, it was by notice dated 20th March, 1973, issued by the widow of late Dr. Amonkar that the respondent—plaintiff was categorically told that he should make alternative arrangement for his consultation practice elsewhere with effect from 1-4-1973 which showed that his licence was terminated with effect from date. It must however be borne in mind that what was terminated by the notice dated 20th March, 1973 was the respondent—plaintiff's attachment as an Honourary Surgeon to Dr. Amonkar Hospital and not his licence. In fact, it was never the case of the appellant—defendants that the respondent—plaintiff was a licensee and, therefore, neither their pleading nor their notice could be used for showing that the respondent—plaintiff's licence continued upto Ist of April, 1973. The appellate Court while accepting the alternative submission was proceeding on the assumption that the resopondent—plaintiff's occupation was as a licensee and on that basis it considered what would be the effect of the averment made by him in para 4 of his complaint which suggested that his oral licence had been terminated by being asked to vacate the cabin long before 1-2-1973. Now in the first place assuming that the appellate Court's conclusion in that behalf was not justified on the evidence on record the same could at the highest be regarded as a wrong conclusion but it is impossible to say that it was suggestive of a non-judicial approach or bias or partiality on its part. Secondly, it amounted to acceptance of the alternative contention on an assumed basis after the appellate Court had already, on a re-appraisal of the entire material in the case, recorded its finding on the factual issue in agreement with the trial Court in favour of the appellant—defendants. In other words, the conclusion on the alternative submission was not merely innocuous i.e. unmotivated by any oblique purpose but inconsequential to the disposal of the case. Having regard to the above discussion we are clearly of the view there was no justification for the High Court to undertake a re-appreciation of the evidence and it outght not to have interferred with the concurrent finding of fact recorded by the two Courts below on the factual issue arising in the case.

Though the aforesaid conclusion of ours would be sufficient to dispose of the appeals, even on merits we feel that the broad features emerging from the evidence on record make it difficult to accept the respondent—plaintiff's case that the user of the suit cabin was permitted to him on leave and licence basis as claimed by him. Admittedly, Dr. Amonkar Hospital was never exclusively a Maternity and Gynaecological Hospital and had a Nursing Home Department where general operations were undertaken and as such attachment of couple of doctors as Honourary Surgeons to it would be most natural and since at the material time both the senior Dr. Amonkar (since deceased) and the junior Dr. Amonkar (defendant No. 2) were on account of their ill-health, unable to work with full vigour, with only doctors (Dr. Miss Usha Amonkar and Dr. Rawalia) in attendance the respondent—plaintiff's attachment as Honourary Surgeon to it for temporary duration till Dr. (Mrs.) Gaitonde returned from Calcutta, could not be said to be unnecessary as opined by the High Court but was more probable. Even the High Court has observed that late Dr. Amonkar had obliged the respondent—plaintiff by accommodating him in the suit cabin temporarily when he was suddenly made to leave his premises on the third floor of the very building and that the respondent—plaintiff had taken advantage of the gesture shown to him by late Dr. Amonkar as Dr. (Mrs.) Gaitonde was away at Calcutta.

Secondly, even the High Court has accepted the position that the user of the suit cabin became available to the respondent—plaintiff as a result of his direct approach to late Dr. Amonkar but through the intervention and good offices of Dr. Rawalia, and he has fully supported the Appellants—Defendants' case that such user was allowed to the respondent—plaintiff on the same terms on which he had been permitted the user of his cabin in that Hospital, namely, because of attachment as Honourary Surgeon to Dr. Amonkar Hospital. But Dr. Rawalia's evidence has been discarded by the High Court for reasons which are, in our view, not sound. Aprt from some minor contradictions (which were really omissions) that appeared in his evidence in light of the averments made by him in his earlier Affidavits filed in the proceedings, the main reason for discarding his evidence has been that he could not be regarded as disinterested witness because of his close ties with the Amonkar family and that he had displayed an attitude of being ever willing to sign any affidavit or to swear to anything to help whom he had come to help; for instance he had gone to the extent of saying "so far I am not asked to go out but I am prepared to go as and when they will tell me to get out", which showed that

A he had identified himself with Amonkars. In our view these aspects would not be good reasons for discarding his evidence. True, some of his answers do show that he was having close ties with the Amonkar family but this is not unnatural if it is borne in mind that he has been working with them in that Hospital since 1954 and the mere fact that he has stated that he was prepared to go whenever Amonkars would B ask him to go would not show that there was any private or secret understanding between him and Amonkars as was sought to be suggested by counsel for the respondent—plaintiff. Since he was a signatory to writing Exh. No. 2 all that he wanted to convery was that his user of the cabin was because of his attachment as Honourary Surgeon to Dr. Amonkar Hospital and as such his right to occupy the cabin C would come to an end as and when his attachment would cease, that is to say, as and when Amonkars would ask him to go. Far from showing any interestedness in the Amonkars his aforesaid statement was an admission against his own interest, as it exposed him to imminent risk of eviction, and as such deserved commendation. Honouring one's word has become a rare virtue these days and it would become rarer D still if those who display it are to be discredited like this. To disbelieve Dr. Rawalia who showed his willingness to honour his word by sticking to the arrangement to which he was a signatory and for not behaving in the manner as respondent—plaintiff has done, would be a travesty of justice.

E

Thirdly, turning to the documentay evidenc, it must be observed that the three or four receipt produced by the respondent—plaintiff showing monthly payments made by him would be of no avail because the nature or the character of the payment, whether it was by way of compensation or towards ratable expenses, has no where been indicated F in any of them. But so far as Exh. No. 1 is concerned it is clear that this document in terms indicates that the respondent—plaintiff was permitted to use the suit cabin not on leave and licence basis but because of his attachment as Honourary Surgeon to Dr. Amonkar Hospital and that it contains a categorical admission on his part that he was neither a tenant nor a licensee thereof. In cross—examination respon- G dent—plaintiff admitted that he had signed this document after fully understanding the contents thereof. If that be so, his oral testimony which runs—counter to the document cannot obviously be accepted unless, of course, the document is shown to have been obtained by late Dr. Amonkar from him for the purpose of avoiding a possible H objection that might be raised by the L.I.C. and was not to be acted upon as suggested by the respondent—plaintiff. As regards the motive or

purpose for which the document was said to have been obtained there are two circumstances which militate against it. In the first place at the material time that is in May 1970 unlawful subletting of premises was a ground for eviction and not the giving it on leave and licence basis and late Dr. Amonkar might have faced some difficulty from his own landlord, namely, L.I.C. if he had sublet the said cabin to the respondent—plaintiff but at that time it could not be within the contemplation of anybody to seek protection against giving premises on licence also, and even so Ext. No. 1 in terms records that respondent—plaintiff was neither a tenant nor a licensee of the suit cabin. Such a double protection was unnecessary as against the L.I.C. but, it was necessary as against the respondent—plaintiff to whom late Dr. Amonkar wanted to ensure that the user of the cabin was allowed only in the capacity of an attached Honourary Surgeon to the Hospital and in no other and that is what Ext. No. 1 says. In our view, the motive suggested by the respondent—plaintiff does not fit in with the situation or state of affairs that existed in May, 1970 and the document really records the true transaction between the parties, namely, that the respondent—plaintiff was allowed the user of the suit cabin because of his attachment as Honorary Surgeon to Dr. Amonkar Hospital. Secondly, if Ext. No. 1 was not to be acted upon and it was signed by respondent—plaintiff on the representation made to him by late Dr. Amonkar that it was simply for the purpose of protecting himself against the L.I.C. and was not to be used against the respondent—plaintiff, the respondent—plaintiff could have obtained from later Dr. Amonkar a writing that effect which he could have preserved for his own safety but no such writing was obtained by him from late Dr. Amonkar and, in our view, if the respondent—plantiff's version were true that Ext. No. 1 had been obtained on the alleged representation two writings could have been executed and preserved by each for his own safety but this was not done. If, therefore, respondent—plaintiff's suggestion as to why Ext. No. 1 was obtained by late Dr. Amonkar from him is not believable—and for the reasons indicated above it is not—the respondent—plaintiff must be held bound by the writing Ext. No. 1 which he executed after fully understanding the contents thereof and his oral testimony that the user of the cabin was given to him on leave and licence basis cannot be accepted.

A B C D E F G

It may be stated that the main reason why the High Court felt that Ext. No. 1 did not reflect the true nature of the transaction between the parties was that no documentary evidence was produced by the appellant—defendants to show that actually medical services were

H

A rendered by the respondent—plaintiff to Dr. Amonkar Hospital. On this point there was merely the respondent—plaintiff's word as against the testimony of defendant No. 2 and Dr. Rawalia. Respondent—plaintiff claimed that he had not rendered any services to Dr. Amonkar Hospital as an attached Honourary Surgeon thereto while both the witnesss on the side of the appellant—defendants asserted that con-
B sultations were held with the respondent—plaintiff whenever occasions arose in maternity cases done in the Hospital. Leaving aside the High Court's view about the unsatisfactory nature of evidence of Dr. Rawalia, there was no reason why the evidence of defendant No. 2 (Junior Dr. Amonkar)—who had as per the High Court's view given evidence in a responsible and restrained manner—should not have been accepted
C on the point. Defendant No. 2 had clearly stated in his evidence that consultations with the respondent—plaintiff were held whenever pre-operative or post-operative problems arose in maternity cases and this was done at least 4 or 5 times a month and he was consulted in his capacity as an Honorary Surgeon attached to the Hospital. It is true
D that no documentary record of such consultations was produced but whether any record of consultations would be maintained or not would depend upon the nature and type of consultations made and it is equally possible that due to lapse of time that had occurred between such consultations and the trial such record may not have been preserved. In our view defendant No. 2's evidence in this behalf need not
E have been rejected simply because no record of such consultations was produced. Furthermore the respondent No. 2 admitted in his evidence that he had made use of the Operation Theatre together with the facilities attached thereto of Dr. Amonkar Hospital for performing operations on his private patients and though there is a controversy as to whether such user of the Operation Theatre was free of charge
F or on payment, in our view such user of Operation Theatret ogether with the facilities attached thereto would not have been permitted to respondent—plaintiff if he were an independent licensee of the suit cabin and was not connected with and attached to the Hospital. Lastly, the evidence clearly shows that right from commencement of his occupation of the suit cabin till January 1973 (when the respondent-
G plaintiff obtained an interim injunction) the respondent plaintiff had no servant of his own attached to the suit cabin but he was getting the services from the members of the Hospital staff in the matter of sweeping, cleaning and dusting of his cabin, receiving his patients in the common waiting room and ushring them into his cabin for which no separate payment was being made by him. Were he an independent licensee of the suit cabin and not attached to the Hospital such services

would not have been made available to him free of charge. A

In our view the aforesaid broad features emerging from the evidence on record clearly support the appellants—defendants' case that the user of the suit cabin was allowed to the respondent—plaintiff not on leave and licence basis but because of his attachment as Honourary Surgeon to Dr. Amonkar Hospital. Such being our conclusion on the factual issue it is un-necessary for us to deal with or discuss the other two semi—legal issues that were argued before us in these appeals. We are clearly of the view that the High Court was not right in reversing the concurrent finding of fact recorded by both the courts below and even on merits the High Court judgment cannot be sustained. The appeals are therefore allowed and the High Court judgment is set aside and the concurrent finding of both the lower courts on the factual issue is restored. The dismissal of the declaratory suit and the findings in the Ejectment Application E.A. No. 259/E of 1976 are confirmed. Parties will bear their respective costs throughout. B C D

S.R. *Appeals allowed.*