

MANGALA WAMAN KARANDIKAR (D) TR. LRS.

v.

PRAKASH DAMODAR RANADE

(Civil Appeal No. 10827 of 2010)

MAY 07, 2021

**[N.V. RAMANA,* CJI., SURYA KANT AND
ANIRUDDHA BOSE, JJ.]**

Interpretation of documents: Contractual interpretation – It depends upon the intentions expressed by parties.

Evidence Act, 1872: s.92 – Contract between parties – Reading of the contract showed that the appellant had intended to transfer business to respondent during the contractual period and the agreement was not meant as a lease or license for the respondent to conduct business – Respondent contended that the meaning of the document should not be culled solely with reference to the language used in the document, rather extrinsic evidence needs to be utilized before adducing proper meaning to the contract – Such contention is not accepted – s.92 specifically prohibits evidence of any oral agreement or statement which would contradict, vary, add to or subtract from its terms – If oral evidence could be received to show that the terms of the document were really different from those expressed therein, it would amount to according permission to give evidence to contradict or vary those terms and as such it comes within the inhibitions of s.92 – It could not be postulated that the legislature intended to nullify the object of s.92 by enacting exceptions to that section – Once the recitals and the contract were accepted, the respondent could not have adduced contrary extrinsic parole evidence, unless he portrayed ambiguity in the language – The evidence pointed that the license was created for continuation of existing business, rather than license/lease of shop premises – Once it is determined that the impugned agreement was a license for continuing existing business, Bombay Rent Act does not cover such arrangements – The jurisdiction of the trial court is accordingly not ousted – Rent Control and eviction.

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**MANGALA WAMAN KARANDIKAR (D) TR. LRS. v.
PRAKASH DAMODAR RANADE**

Allowing the appeal, the Court Held:

1. **Unlike a statutory interpretation, which is even more difficult due to assimilation of individual intention of law makers, contractual interpretation depends on the intentions expressed by the parties and dredging out the true meaning is an 'iterative process' for the Courts. In any case, the first tool for interpreting, whether it be a law or contract is to read the same.** [Para 9]
2. **It is usual that businessmen often do not sit over nitty-gritty in a contract. In a document the language used by the parties may have more than one meaning. It is ultimately the responsibility of the Courts to decipher the meaning of the words used in a contract, having regards to a meaning reasonable in the line of trade as understood by parties. It may not be out of context to state that the development of rules of contractual interpretation has been gradual and has taken place over century.** [Para 10]
- 3.1 **It is clear from the reading of the contract that the parties had intended to transfer business from appellant to respondent during the contractual period. This agreement was not meant as a lease or license for the respondent to conduct business. However, the respondent contends that the meaning of the document should not be culled solely with reference to the language used in the document, rather extrinsic evidence needs to be utilized before adducing proper meaning to the contract. In this regard he submits that on consideration of all the extrinsic evidence, the contract should be read as a leave and license agreement, which is covered under the Bombay Rent Act. He draws his support from Section 95 of the Indian evidence Act to state that the document needs to be interpreted having regard to external evidence such as receipts of payment under the contract addressed as rent receipts etc. It is manifest from Section 92 and Section 95 that it is only in cases where the terms of the document leave the question in doubt, then resort could be had to the *proviso*. But when a document is a straightforward one and presents no difficulty in construing it, the *proviso* does not apply.** [Paras 11, 14]

SUPREME COURT REPORTS

- 3.2 **Section 92 specifically prohibits evidence of any oral agreement or statement which would contradict, vary, add to or subtract from its terms. If oral evidence could be received to show that the terms of the document were really different from those expressed therein, it would amount to according permission to give evidence to contradict or vary those terms and as such it comes within the inhibitions of Section 92. It could not be postulated that the legislature intended to nullify the object of Section 92 by enacting exceptions to that section. [Para 15]**
4. **The contract mandated continuation of the business in the name of 'Karandikar Brothers' by paying royalties of Rs. 90 per month. Once the parties have accepted the recitals and the contract, the respondent could not have adduced contrary extrinsic parole evidence, unless he portrayed ambiguity in the language. It may not be out of context to note that the extension of the contract was on same conditions. [Para 16]**
5. **The High Court erred in appreciating the ambit of Section 95, which led to consideration of evidence which only indicates breach rather than ambiguity in the language of contract. The evidence also points that the license was created for continuation of existing business, rather than license/lease of shop premises. If the meaning provided by the High Court is accepted, then it would amount to Courts substituting the bargain by the parties. Once it is determined that the impugned agreement was a license for continuing existing business, Bombay Rent Act does not cover such arrangements. Therefore, the jurisdiction of the trial court is accordingly not ousted. [Paras 17, 18]**

Rohitash Kumar v. Om Prakash Sharma (2013) 11 SCC 451 : [2012] 13 SCR 47 – relied on.

Investors Compensation Scheme v. West Bromwich Building Society [1998] 1 WLR 896; Wigmore JH, "Wigmore on Evidence, Vol. 4" (1915) 25 The Yale Law Journal 163 – referred to.

**MANGALA WAMAN KARANDIKAR (D) TR. LRS. v.
PRAKASH DAMODAR RANADE**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10827 of 2010.

From the Judgment and Order dated 07.11.2009 of the High Court of Judicature at Bombay in Second Appeal No.537 of 1991.

Ms. Abha R. Sharma, Ms. Gwen Karthika, Advs. for the Appellants.

Rajendra V. Pai, Sr. Adv., Ms. Bina R. Pai, Aloukik R. Pai, Akshay R. Pai, Ms. Nikita K. Dharamshi, Vitthal Devkhile, Anand Dilip Landge, Advs. for the Respondent.

The Judgment of the Court was delivered by

N. V. RAMANA, CJI

1. This appeal is filed against the judgment of the Bombay High Court, in Second Appeal No. 537 of 1991, wherein the second appeal was allowed in favour of the respondent and the decree in favour of the appellant herein was set aside.
2. This case arises out of a contract entered into between the Appellant (since deceased represented through Legal Heirs) and the Respondent. Initially Appellant's husband was running a business of stationary in the name of "Karandikar Brothers" before his untimely demise in the year 1962. After his demise, she continued the business for some time. After a while, she was unable to run the business and accordingly decided to let the Respondent run the same for some time. She entered into an agreement dated 07.02.1963, wherein following terms were reduced in writing:

"2. For the last about 24 to 25 years, a stationary shop by the name Karandikar Brothers belonging to you of the stationary, note books and books is being run in the premises situated in City Survey no. 196/66 (New House No. 1643) at Sadashiv Peth, Pune. I request to you to give the said shop to me for running the same. Accordingly, you agreed for the same. Accordingly, an agreement was reached between us. The terms and conditions whereof are as follows:

- A. The stationary shop · by name "Karandikar Brothers" belonging to you of the stationary materials which is situated in the premises described in Para 1 (a) above and in which the furniture etc. as described in Para I(b) above belonging to you is existing

SUPREME COURT REPORTS

is being taken by me for conducting by an agreement for a period of two years beginning from 1st February 1963 to 31st January 1965.

B. The rent of the shop described in Para 1 (a) above is to be given by you only to the owner and I am not responsible therefor. I am to pay a royalty amount of Rs. 90 /-(Rupees Ninety only) for taking the said shop for conducting, for every month which is to be paid before the 5th day of every month.”

3. Time after time, the contract was duly extended. In 1980s, desiring to start her husband’s business again, appellant herein issued a notice dated 20.12.1980 requesting the Respondent herein to vacate the suit premises by 31.01.1981. The Respondent replied to the aforesaid notice claiming that the sale of business was incidental rather the contract was a rent agreement *stricto sensu*. Aggrieved by the Respondent’s reply, the appellant herein filed a civil suit being RCS. No. 764 of 1981 before the Court of Joint Civil Judge, Junior Division, Pune. During the course of the trial, one of the important questions that the Trial Court framed, which is relevant for our purpose can be observed hereunder:

“Does the Defendant prove that from the year 1963 he is licensee in the said suit premises as contended in para 7 of the plaint? And thereby on the date of suit he became tenant of the suit premises under Section 15A of the Bombay Rent Act?”

The Trial Court by Judgment dated 30.08.1988, decreed the Suit in favor of the appellant herein and held that the purport of the Agreement was to create a transaction for sale of business rather than to rent the aforesaid premises to the Respondent herein. The Court while negating the contention of the Respondent, that the shop premises was given to him on license basis held as under:

“8. The defendant does not deny the fact that originally the husband of deceased Mangala Karandikar namely Waman Karandikar used to conduct the business of the suit shop. The business of stationary, books and notebooks was being run by him. Same business has been handed over to him. ... The suit shop and the said business came to deceased Mangala Karandikar after the death of her

**MANGALA WAMAN KARANDIKAR (D) TR. LRS. v.
PRAKASH DAMODAR RANADE**

husband. It has come in the evidence 50 that because of death of her husband and after the death of her husband, she was unable to continue the business. In the meantime, the defendant approached to her. Thereupon she agreed to hand over the running business to the defendant. This fact has been denied by the defendant. The defendant raises the contention that the plaintiff never had the shop of stationary, but she had the grocery shop. After the death of her husband, it was lying closed for years together. In the year 1963 the defendant approached the plaintiff and thereupon the plaintiff agreed to give the suit shop. On licence basis to him. This plea of the defendant is negatived by the terms and conditions of the agreement deed itself. The heavy burden was lying on the defendant to prove that there was licence agreement. He has not discharged the same. Therefore, the document became much relevant, and it has got material importance. If the conditions as enumerated in this document Exh.33 are carefully scrutinized, it will become significant that the deceased plaintiff had the sole intention to hand over' the running business of the suit shop to the defendant. **There had been no intention to create the leave and licence in respect of the suit premises.** The deceased plaintiff had very specifically and by taking at most case and precaution excluded the word premises of shop in the agreement. But all the while the word · "shop" was used with reference to business only. **Nextly she has also excluded the word rent to be used. She had specifically made the recital of imposing the royalty on the defendant.** The word licence, for the purpose of Bombay Rent Act always refers to premises. The defendant has to seek the benefit under the provisions of Bombay Rent Act. Here the plaintiff had never intended to create the leave and licence in respect of the suit shop. The defendant has relied upon the receipt Exhibit-40. This is the document produced by the plaintiff. It discloses that the word "rent" has been shown in this respect. The defendant is taking benefit of this fact and alleging that the rent was being recovered and not the royalty. Here it is worth to be noted that the plaintiff had at all no intention to recover the rent. All the while, it has been the case of the plaintiff that the royalty was being recovered. Therefore, I am unable to hold that the rent was being recovered by the plaintiff. ...

SUPREME COURT REPORTS

“14. Issue Nos. 5 and 6. - The defendant has alleged that he is the tenant in the suit shop. Initially, the premises were given to him on licence basis but by virtue of amendment to Bombay Rent Act and by virtue of insertion of section 15(A) all the licensees have become the tenants. Learned advocate appearing on behalf of the defendant places his reliance on Case Law reported in A.I.R. 1987 Supreme Court page 117. No doubt there can be no dispute regarding the principles of law. **In the instant suit, the defendant has utterly failed to prove that the shop premises were given to him on licence basis.** Therefore, no question of his tenancy can arise at any time. ...”

(emphasis supplied)

4. Accordingly, the Trial Court ordered the respondent to hand over the suit property to the appellant herein including the furniture and other articles.
5. Aggrieved by the Trial Court judgment, the Respondent filed an Appeal before the Court of Additional District Judge, Pune in Civil Appeal No. 979 of 1988. On 29.07.1991, the Additional District Judge rendered a judgment dismissing the appeal filed by the Respondent herein. Aggrieved by the dismissal the Respondent herein filed a Second Appeal before the High Court of Bombay in Second Appeal No. 537 of 1991.
6. By impugned order dated 07.11.2009 the High Court of Bombay allowed the Second Appeal and set aside the Trial Court’s Order as well as the First Appellate Court’s Order and held that the Respondent had entered into a license agreement which is covered under Section 15A of the Bombay Rent Act. Further the Court held that the Trial Court did not have the Jurisdiction to try the cases under the Bombay Rent Act, the appropriate Court should have been Small Causes Court established under the Provincial Small Causes Court Act. The Second Appellate Court also observed on the merits of the case and held as under.

“22. Thus, considering the entirety of the case, in my view, both the Courts below have incorrectly interpreted the document and the surrounding circumstances which, in my view, indicate that the parties had in fact agreed that the premises were transferred to the appellant on a leave and license basis.”

**MANGALA WAMAN KARANDIKAR (D) TR. LRS. v.
PRAKASH DAMODAR RANADE**

7. Aggrieved by the same, the appellant herein filed this appeal.
8. The counsel for the appellant contended that the impugned order of the High Court erred in appreciating the language of the contract, which clearly points towards the intention of the parties to create a license for continuing existing business, which was run by late husband of the appellant. On the other hand, the counsel for the respondent has supported the judgment by stating that there is extrinsic evidence which shows that the contract entered into between the parties was a license to use the shop, which is covered under Bombay Rent Act. In this light, he supports the impugned order to state that the Trial Court did not have jurisdiction in the first place.
9. Having heard both the parties at some length, at the outset before we analyse this case, we need to observe some principles on contractual interpretation. Unlike a statutory interpretation, which is even more difficult due to assimilation of individual intention of law makers, contractual interpretation depends on the intentions expressed by the parties and dredging out the true meaning is an 'iterative process' for the Courts. In any case, the first tool for interpreting, whether it be a law or contract is to read the same.
10. It is usual that businessmen often do not sit over nitty-gritty in a contract. In a document the language used by the parties may have more than one meaning. It is ultimately the responsibility of the Courts to decipher the meaning of the words used in a contract, having regards to a meaning reasonable in the line of trade as understood by parties.¹ It may not be out of context to state that the development of rules of contractual interpretation has been gradual and has taken place over century. Without going into extensive study of precedents, in short, we may only state that the path and development of law of interpretation has been a progress from a stiff formalism to a strict rationalism.²
11. It is clear from the reading of the contract that the parties had intended to transfer business from appellant to respondent during the contractual period. This agreement was not meant as a lease

¹ *Investors Compensation Scheme v. West Bromwich Building Society*, [1998] 1 WLR 896
² Wigmore JH, "Wigmore on Evidence, Vol. 4" (1915) 25 The Yale Law Journal 163.

SUPREME COURT REPORTS

or license for the respondent to conduct business. However, the respondent contends that the meaning of the document should not be culled solely with reference to the language used in the document, rather extrinsic evidence needs to be utilized before adducing proper meaning to the contract. In this regard he submits that on consideration of all the extrinsic evidence, the contract should be read as a leave and license agreement, which is covered under the Bombay Rent Act. He draws his support from Section 95 of the Indian evidence Act to state that the document needs to be interpreted having regard to external evidence such as receipts of payment under the contract addressed as rent receipts etc.

12. It may be noticed that the High Court had appropriately identified the question of law in the following manner:

15. The debate therefore revolves around the question as to whether the agreement of 7th February, 1963 was a license to conduct a business in the premises or was a license to run the existing business which was being run by the respondents in the suit premises. Does the document create an interest in the premises or in the business?

13. The High Court in order to answer the question utilized Section 95 of the Evidence Act, which reads as under:

95. Evidence as to document unmeaning in reference to existing facts.—When language used in a document is plain in itself, but is unmeaning in reference to existing facts, evidence may be given to show that it was used in a peculiar sense.

Illustration A sells to B, by deed, "my house in Calcutta". A had no house in Calcutta, but it appears that he had a house at Howrah, of which B had been in possession since the execution of the deed. These facts may be proved to show that the deed related to the house of Howrah.

Aforesaid Section is part of Chapter VI, which deals with 'Of the exclusion of Oral by documentary evidence' containing Section 91 to 100. Section 92 reads as under:

92. Exclusion of evidence of oral agreement.—When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document,

**MANGALA WAMAN KARANDIKAR (D) TR. LRS. v.
PRAKASH DAMODAR RANADE**

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

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

14. It is manifest from these two sections that it is only in cases where the terms of the document leave the question in doubt, then resort could be had to the *proviso*. But when a document is a straightforward one and presents no difficulty in construing it, the proviso does not apply. In this regard, we may state that Section 95 only builds on the proviso 6 of Section 92.
15. If the contrary view is adopted as correct it would render Section 92 of the Evidence Act, otiose and also enlarge the ambit of proviso 6 beyond the main Section itself. Such interpretation, provided by the High Court violates basic tenants of legal interpretation.³Section 92 specifically prohibits evidence of any oral agreement or statement which would contradict, vary, add to or subtract from its terms. If, as stated by the learned Judge, oral evidence could be received to show that the terms of the document were really different from those expressed therein, it would amount to according permission to give evidence to contradict or vary those terms and as such it comes within the inhibitions of Section 92. It could not be postulated that the legislature intended to nullify the object of Section 92 by enacting exceptions to that section.
16. In line with the law laid down, it is clear that the contract mandated continuation of the business in the name of 'Karandikar Brothers' by paying royalties of Rs. 90 per month. Once the parties have accepted the recitals and the contract, the respondent could not have adduced contrary extrinsic parole evidence, unless he portrayed ambiguity in the language. It may not be out of context to note that the extension of the contract was on same conditions.

SUPREME COURT REPORTS

17. On consideration of the matter, the High Court erred in appreciating the ambit of Section 95, which led to consideration of evidence which only indicates breach rather than ambiguity in the language of contract. The evidence also points that the license was created for continuation of existing business, rather than license/lease of shop premises. If the meaning provided by the High Court is accepted, then it would amount to Courts substituting the bargain by the parties. The counsel for respondent has emphasized much on the receipt of payment, which mentions the term 'rent received'. However, in line with the clear unambiguous language of the contract, such evidence cannot be considered in the eyes of law.
18. Moreover, the contention that the aforesaid situation is covered by the Bombay Rent Act is misplaced. Once we have determined that the impugned agreement was a license for continuing existing business, Bombay Rent Act does not cover such arrangements. Therefore, the jurisdiction of the trial court is accordingly not ousted.
19. In light of the above, the impugned order of the High Court cannot be sustained, and is accordingly, set aside. The decree of the trial court is restored. The appeal is allowed in the above terms and there shall be no order as to costs.

Headnotes prepared by: Devika Gujral

Result of the case:
Appeal allowed.