

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO. 578 OF 2024

All India Travel Services
a Partnership Firm, having its
Registered Office at – 75-C,
Ground Floor, Shop, Mayfair Building
Veer Nariman Road, Bombay-400020
Represented by its Partnership
Shri. Subhash Jain

... Applicant
(Original Plaintiff)

VERSUS

- 1) Ashok K. Upadhayay
(Deleted as per order dated 19.11.2024)
Indian, aged about 36 years
Residing at 52, Apurva
5, Nepeansea Road, Mumbai 400026.
- 2) Miss. Manju Upadhayay
Indian, aged about 32 years
Residing at – Ivanhoe, G. Bhosale Marg
Mumbai 400 021.
- 3) Sunil Upadhayay
Indian, aged about 24 years
Residing at – Ivanhoe, G. Bhosale Marg
Mumbai 400 021.
- 4) Messrs Jamnagar Investment Co.
Pvt. Ltd. A private Limited
(Deleted as per order dated 19.11.2024)
Liability
Company having its registered office
at Union Co-operative Insurance Building,

23, Sir P. M. Road, Fort,
Mumbai 400001.

- 5) M/s. K. C. Chheda & Co.,
A firm, registered under the
Indian Partnership Act,
having their office at
Western India House, P. M. Road,
Mumbai 400001.

... Respondents
(Original Defendants)

**WITH
INTERIM APPLICATION NO. 13110 OF 2025
IN
CIVIL REVISION APPLICATION NO. 578 OF 2024
WITH
INTERIM APPLICATION NO. 13111 OF 2025
IN
CIVIL REVISION APPLICATION NO. 578 OF 2024**

Senior Adv. G. S Godbole i/b. J. P. Thakkar, Advocate for the Applicant.
Adv. Rajesh Parab, Advocate for the Respondents.

**CORAM : ARUN R. PEDNEKER, J.
RESERVED ON : 18.08.2026
PRONOUNCED ON : 22.09.2026**

JUDGMENT :

1. The short issue that arises for consideration is whether the benefit of Section 15(A) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for brevity, Bombay Rent Control Act, 1947) can be granted to an unregistered partnership firm in occupation of the tenanted

premises as a licensee as on the notified date of 01.02.1973 in view of the bar contained in Section 69 (2) of the Indian Partnership Act, 1932.

2. **The facts giving rise to the above noted questions of law in brief is summarized as under :**

3. That the Applicant partnership firm was unregistered when the leave and license agreement was executed on 30.05.1966 between the tenant and sub-tenant (Applicant) and the Applicant continued to be in occupation of the tenanted premises on 01.02.1973 and throughout. The Applicant firm was subsequently registered on 03.10.1973. Section 15-A of the Bombay Rent Control Act, 1947, recognizes tenancy rights in favour of the person who is in occupation of the leased premises as a licensee on the notified date i.e. 01.02.1973.

4. In the instant case, S. T. Upadhayay was the original tenant of the suit premises. He expired on 30.09.1986. Defendant Nos. 1 to 3 are his legal heirs and Defendant No. 4 is the original landlord of the suit building. Defendant No. 5 is the present landlord who has purchased the suit building from Defendant No. 4.

5. The Applicant's/Plaintiff's case, in the plaint, is that the Applicant is a registered partnership firm. The Applicant claimed to be in exclusive occupation and possession of the suit premises by virtue of leave and license

agreement executed by Original tenant, S. T. Upadhayay in the year 1966 in its favour. The Applicant was paying the license fees which was increased from time to time and was Rs. 2,500/- per month at the time of filing of the suit. The Plaintiff paid to the original tenant till September 1987, after the death of the Original tenant to the Legal Representatives of the deceased tenant i.e. Defendant No. 1 to Defendant No. 3. The Plaintiff was initially doing business in the name and style of 'All India Travel Services' and now carrying on the business as general Sales Agents of Iraq Airways.

6. It is the case of the Plaintiff that some unknown persons tried to take forcible possession of the suit premises. As such the Plaintiff filed the R.A.D. Suit No. 4088 of 1987 seeking declaration of tenancy and injunction. Defendant Nos. 1 to 3 filed their written statements denying allegations of attempt of forcible dispossession, they contended that their father, S. T. Upadhayay was the tenant of the entire ground floor on the west side of their suit building and by virtue of Leave and License Agreement dated 30.05.1966, only a part of suit premises was given to the Plaintiff through its purported partner Charandas Jain.

7. Defendant No. 5 also filed his written statement and denied the leave and license agreement executed by the tenants with Plaintiff. It is also stated that the original tenant S. T. Upadhayay illegally and wrongfully sublet the

suit premises or major portion of the suit premises to the Plaintiff under the alleged leave and license agreement.

8. Independently, Defendant Nos. 4 and 5 has also filed R.A.E. Suit No. 367/1471 of 1978 against the S. T. Upadhyay and the present Applicant / Original Plaintiff for eviction from the suit premises i.e. a shop situated on the Ground Floor of Mayfair Building, 75, C Veer Nariman Road, Fort, Mumbai – 400 020.

9. After considering the rival pleadings and the evidence on record, the Trial Court in the instant case framed following issues and answered them accordingly :-

Sr. No.	Issues	Findings
1)	Whether the plaintiff proves that since 1966, the plaintiffs were in possession of the suit premises as a license under leave and license agreement ?	In the affirmative.
2)	Whether the plaintiff is entitled to get declaration of his tenancy in respect of suit premises ?	In the negative.
3)	Whether plaintiff is entitled to the injunction as sought for ?	In the negative
4)	What order and decree ?	As per final order.

Sr No.	Additional Issues	Findings
1)	Whether Plaintiff's suit is maintainable ?	In the negative
2)	Whether Plaintiff's firm was unregistered, as alleged by defendant ?	In the affirmative

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The Trial Court accordingly dismissed the Suit.

10. The Plaintiff thereafter filed an R. Appeal No. 290 of 2015 in R. A. D. Suit No. 4088 of 1987. The Appellate Court formulated following points for consideration and rendered its findings thereon as quoted below :

Sr.No	Points	Findings
1.	Whether the Plaintiff proves that since 1966, the plaintiffs were in possession of the suit premises as a licensee under leave and license agreement ?	Yes
2.	Whether the plaintiff is entitled to get declaration of his tenancy in respect of suit premises ?	No
3.	Whether plaintiff is entitled to the injunction as sought for ?	No
4.	Whether plaintiff's suit is maintainable ?	No
5.	Whether plaintiff's firm was unregistered, as alleged by defendant ?	Yes
6.	Whether the impugned Judgment and decree of the trial court needs interference in the appeal ?	No.
7.	What order and decree ?	Appeal dismissed as per final order.

11. The Trial Court as well as the Appellate Court has held that the Plaintiff was in possession of the premises from 1966 under a leave and license agreement. However, it held that the Plaintiff (sub-tenant) is not entitled for declaration of its tenancy as the Plaintiff firm was not registered

on the notified date i.e. 01.02.1973 and was later on registered on 03.10.1973.

12. In these facts situation, the question that arises for consideration is as noted in Paragraph No. 1. The relevant provisions of Section 15-A of the Bombay Rent Act and Section 69 and 69(2) of the Indian Partnership Act, 1932, are quoted below :

Section 69 of the Indian Partnership Act, 1932 : Effect of non-registration :-

Section 69

“(1) No suit to enforce a right arising from a contract or conferred by this Act shall be institutes in any Court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm.

(2) No suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm.”

Section 15-A of the Bombay Rent Control Act, 1947 :

Section 15-A

“(1) Notwithstanding anything contained elsewhere in the Act or anything contrary in any other law for the time being in force, or in any contract, where any person is on the 1st day of February 1973 in occupation of any premises, or any part thereof which is not less than a room, as a licensee be shall on that date be deemed to have become, for the purpose of this Act, the tenant of

the landlord, in respect of the premises or part thereof, in his occupation.

2) The provisions of sub-section shall not affect in any manner the operation of sub-section of section 15 after the date aforesaid.”

13. The bar contend under Section 69(2) of the Indian Partnership Act, 1932, is to enforce a right arising from a contract and it provides that no suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of firm against the third party unless the firm is registered and the persons suing are or have been show in the register of firms as a partner in the firm.

14. Section 15-A of the Bombay Rent Control Act, 1947, grants a statutory protection to any person who is in occupation of any premises or any part thereof on 01.02.1973 as a licensee, and he shall be deemed to have become the tenant of the landlord in respect of the premises or a part thereof in occupation for the purpose of the Rent Act. The statutory right conferred under Section 15-A is not a mere contractual right which the partnership firm seeks to enforce. There is no bar under the Partnership Act or under the Bombay Rent Control Act, 1947, which prohibits the unregistered partnership firm from becoming the beneficiary of a statutory right as is made available under Section 15-A of the Bombay Rent Control Act, 1947.

15. The partnership firm/Applicant is found in possession of the suit

premises under a leave and license agreement as on the notified date i.e. 01.02.1973. Thus the reasoning of the Trial Court and the Appellate Court that the firm was not registered on the notified date i.e. 01.02.1973 and as such cannot claim the benefit of Section 15-A of the Bombay Rent Control Act, 1947, in view of the bar contained in Section 69(2) of the Partnership Act is erroneous. Section 69(2) of the Partnership Act merely prohibits filing of a suit on behalf of an unregistered partnership firm to enforce a contractual right against a third party.

16. In the instant case, the rights enforced by the Partnership Firm are statutory in nature under Section 15-A of the Bombay Rent Act. The bar contained under Section 69(2) of the Partnership Act has no relevance for enforcement of a statutory right and the partnership firm through unregistered as on 01.02.1973 is entitled to the protection of Section 15-A of the Bombay Rent Control Act, 1947. The right conferred under Section 15-A of the Bombay Rent Control Act, 1947 is available to a licensee in occupation, including a partnership firm although unregistered on the notified date. It is pertinent to note that as on the date of filing of the suit, the Applicant/Partnership Firm was registered.

17. The Division Bench of Madras High Court in case of ***Dungarsi Ranchhodas Jayesh Niwas, Kozhikode vs. Moolji Visanji reported in AIR***

2004 Ker 314 considered similar issue, in a case, when an Eviction Petition was filed on behalf of an unregistered partnership firm represented by a partner and the question raised was as to whether the Rent Control Petition is hit by Section 69(2) of the Partnership Act ? The Court held that Section 11(1) of the Rent Control Act enables the landlord to prefer an application for eviction on specified grounds. The non-obstante clause in the Section 11(1) of the Rent Act overrides the permission of Section 69(2) of the Indian Partnership Act, 1932. The Court held that the right given to the landlord to file an eviction petition is a statutory right conferred under the Rent Act and is not controlled by any other law. The Court held the suit maintainable.

18. The Supreme Court in the case of ***Raptakos Brett & Co. Ltd. Vs. Ganesh Property*** reported in MANU/SC/0595/1998 has held that the bar contain under Section 69 of the Indian Partnership Act, 1932, is to institute a suit on behalf of an unregistered firm against a third person to enforce a contractual right and not a statutory right. If the suit simplicitor is based on a covenant in the agreement for enforcement of a clause in the agreement against the third party, the same would be barred under Section 69(2) of the Indian Partnership Act, 1932, unless the firm is registered on the date of filing of the suit. However, the bar does not apply for enforcement of statutory right against a third person.

For ready reference para 26 of *Raptakos Brett & Co. Ltd.* (supra) is quoted as below :

*“26. On the facts of the present case it has to be held that there is no further locus poeneteatiae given to the tenant to continue to remain in possession after the determination of lease by efflux of time on the basis of any such contrary express term in the lease. Consequently, it is legal obligation flowing from Section 180(g) of the Act which would get squarely attracted on the facts of the present case and once the suit is also for enforcement of such a legal right under the law of the land available to the landlord it cannot be said to be that enforcement of such right arises out of any of the express terms of the contract which would in turn get visited by the bar of Section 69(2) of the Partnership Act. Consequently it has to be held that when paragraph 2 of the plaint in addition made a reference to right of the plaintiff to get possession under the law of the land, the plaintiff was seeking enforcement of its legal right to possession against the erstwhile lessee following from the provisions of Section 108(g) read with section 111(a) of the Property Act which in turn also sought to enforce the corresponding statutory obligation of the defendant under the very same statutory provisions. So far as this part of the cause of action is concerned it stands completely outside the sweep of Section 69(2) of the Partnership Act. **The net result to this discussion is that the present suit can be said to be partly barred by Section 69 Sub-section (2) so far as it sought to enforce the obligation of the defendant under Clauses 14 and 17 of the contract of lease read with the relevant recitals in this connection as found in paragraph 2 of the plaint. But it was partly not barred by Section 69 Sub-section (2) in so far as the plaintiff based a part of its cause of Action also on the law of the land, namely, Transfer of Property Act where under the plaintiff had sought to enforce its statutory right Under Section 108(q) read with Section 111(a) of the Property Act. Enforcement of the right had nothing to do with the earlier contract which had stood determined by efflux of time. The first***

point for determination therefore, has accordingly, to be held partly in favour of the plaintiff and partly in favour of the defendant. As the decree for possession is passed on the basis of both parts of causes of Action, even if it is not supportable on the first part, it will remain well sustained on the second part of the very same cause of Action.”

19. Both the Courts have erred in interpreting the provision of Section 69(2) of the Indian Partnership Act, 1932 and the benefit available to a licensee in occupation under Section 15-A of the Bombay Rent Act, 1947. Accordingly, the Judgment and order passed by both the Courts are set aside.

20. The R. A. D. Suit No. 4088 of 1987 filed before the Small Causes Court is allowed in terms of Prayer Clauses (A), (B) & (E). The Decree be drawn accordingly.

(ARUN R. PEDNEKER, J.)

21. Learned counsel appearing for the Respondent seeks stay of the order passed today. No stay can be granted as the Applicant/tenant is in possession of the property. Therefore the prayer for stay is refused.

(ARUN R. PEDNEKER, J.)