

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**WRIT PETITION NO. 9762 OF 2015  
WITH  
CIVIL APPLICATION NO. 14169 OF 2015**

Udhav Sahebrao Chaure,  
Age: 48 years, Occ: Business,  
R/o. Sayhadri Housing Society,  
Bajaj Nagar Waluj, MIDC,  
Aurangabad.

...Petitioner

versus

1. Shrikant Chandrakant Shelke  
Proprietor Chandrashil Industries  
Age: 39 years, Occ: Business,  
R/o. Flat No. B-8, Disha Sankul,  
Garkheda, Aurangabad GPA Holder of  
Badriprasad Nandlal Bangad,  
Age: 51 years, Occ: Service,  
R/o. Flat No. 8, Shriram, Opp. Old MGM  
Hospital, Near old Telephone Bhavan,  
Aurangabad.
2. Maharashtra Industrial Development  
Corporation, Orient Hoiuise, Adi  
Merzban Path, Ballard Estate,  
Mumbai-400 038.
3. The Regional Officer,  
M.I.D.C. Aurangabad Industrial Area,  
Near Railway Station Road, Aurangabad.

(Respondent Nos. 2 & 3 deleted as  
per Court's order dated 29/09/2015)

...Respondents

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Mr. P.,R. Katneshwarkar, Advocate h/f Mr. R.P. Dhase, Advocate for  
petitioner

Mr. R.R. Mantri, Advocate h/f Mr. P.K. Lakhotiya, Advocat3e  
for respondent No.1

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**CORAM : N.W. SAMBRE, J.**

**Reserved on : 20/11/2015**

**Pronounced on : 05/12/2015**

**ORAL ORDER :**

This writ petition is by the original defendant questioning the decree of eviction passed in Regular Civil Suit No. 855 of 2012 on 04/05/2013 by 3<sup>rd</sup> Joint Civil Judge, Junior Division, Aurangabad, confirming the appeal by learned District Judge-7, Aurangabad in Regular Civil Appeal No. 156 of 2013 in exercise of powers under Section 96 of the Code of Civil Procedure, by judgment and order dated 13/08/2015.

2. Few facts, as are necessary, for deciding the present writ petition are as under :

The petitioner-defendant has admitted that by virtue of leave and licence agreement entered into between the petitioner and respondent on 01/03/2010 for period of 11 months. The land in question was permitted to be used by him on leave and licence basis. It is then claimed that respondent herein filed a suit referred supra for possession on the ground that period of licence has already came to an end. Apart from above, it is claimed that terms of licence were breached by present petitioner, the amount of licence fees is

outstanding since January, 2011, change of user, bonafide need and damages.

3. The suit came to be resisted by present petitioner by filing Written Statement at Exhibit-18 alleging therein that the property in question was given in possession of the petitioner for the purpose of carrying out certain trade activities. It is further claimed that since the petitioner is an uneducated person, was not aware about the terms of leave and licence. It is claimed that original owner of the property in question is Maharashtra Industrial Development Corporation, who has leased out the property in favour of present respondent. It is further claimed that the petitioner is ready and willing to deposit the amount of licence fees and respondent is not entitled for possession of the suit property under caption 'bonafide need'.

4. Learned trial Court framed issues at Exhibit-20. Amongst other issues were in relation to bonafide need, arrears of licence fees, if any, entitlement of compensation of Rs.40,000/- to the respondent, entitlement of compensation to the extent of Rs.2,00,000/- as claimed.

5. The respondent herein has examined his Special Power of Attorney Shrikant at Exhibit-37 and Exhibit-38 is document special power of attorney. Special Power of Attorney was proved by secondary evidence after the Court granted permission to that effect below Exhibit-34. The plaintiff, in support of his claim, filed his examination in chief at Exhibit-23, wherein it was brought to the notice of the Court below that disputed property located on Plot No. C-289, out of total area 614 sq. mts., area 2855 sq. ft. is in possession of the present petitioner. It is claimed that leave and licence agreement at Exhibit-27 was executed for 11 months on 01/03/2010.

6. Learned trial Court considered the entire pleadings and submissions of respective parties including of evidence on record and has inferred, as both the parties have admitted leave and licence agreement, proceeded to evaluate the issue of outstanding licence fees, if any, damages, bonafide need and decreed the suit.

7. Present petitioner in stead of preferring the appeal under Section 34 of the Maharashtra Rent Control Act, 1999, preferred the appeal under Section 96 of the Code of Civil Procedure. The said appeal came to be dismissed by learned District Judge on 13/08/2015 by considering the grounds as were sought to be raised before it, as such, present writ petition.

8. Mr. Katneshwarkar, learned Counsel for the petitioner, so as to questioning the legality and validity of both the judgments delivered by Courts below would urge that since the nature of use of suit property is commercial, provisions of Maharashtra Rent Control Act are not applicable. He would then urge that original owner of the property is M.I.D.C., who has leased out the property in favour of present respondent and in absence of M.I.D.C. as party-defendant to the suit, the suit should have been dismissed for want of necessary party. He would then claimed that the documents at Exhibits-26 and 27 i.e. original lease deed by M.I.D.C. and leave and licence agreement ought to have been rejected by the Courts below as not proved.

9. In addition to above, according to him, the appeal ought not to have been treated to be one under Section 96 of the Code of Civil Procedure even though preferred by the petitioner but should have been considered within the scope of Section 34 of the Maharashtra Rent Control Act. He would then add that the lower appellate Court has not framed points for its consideration.

10. Mr. Katneshwarkar, learned Counsel for the petitioner then relied upon the Full Bench judgment of this Court in the matter

of ***Jagdish Balwantrao Abhyankar and others vs. State of Maharashtra and others*** reported in ***AIR 1994 Bombay 141*** so as to submit that the appeal needs to be allowed and restored to the file of learned District Judge for dealing with it within scope of Section 34 of the Maharashtra Rent Control Act.

11. Learned Counsel for the respondent-landlord, while opposing the petition, would urge that Exhibit-27, leave and licence agreement was executed for the purpose of permitting use of the property for business and in view of Section 2 of the Maharashtra Rent Control Act, 1999, the proceedings are governed by the said statute. He would then urge that remedy of appeal as is claimed under Section 34 of the Maharashtra Rent Control Act is provided under the said statute, however, even if the petitioner has filed appeal under Section 96 of Code of Civil Procedure, the appeal under Section 34 of the Maharashtra Rent Control Act lies to learned District Judge and learned District Judge has rightly decided the said issue. He would urge that it is not open for this Court in writ petition in limited supervisory jurisdiction to upset concurrent findings recorded by both the Courts below, by re-appreciating the evidence. Learned Counsel would then urge that both the Courts below have rightly decided the issue and sought dismissal of the writ petition.

12. With the assistance of learned respective Counsel, I have perused the evidence recorded by both the Courts below including that of pleading raised by the parties in their respective plaint and written statement and also evidence that is brought on record.

13. At the outset, it is required to be noted herein that, sub-section 2 of Maharashtra Rent Control Act, 1999 ( for short 'the Act') deals with the applicability of the statute and Act is applicable even to the premises which are let out for business purpose. In view thereof, in my opinion, the applicability of the Act to the premises in question, which is subject matter of the petition could be answered in favour of the original plaintiff- respondent herein. I am fortified in my view, in the light of the judgment delivered by this Court in Writ Petition No. 501/2014 pronounced on 04<sup>th</sup> June, 2007, wherein this Court has held that provisions of Maharashtra Rent Control Act, 1999 are applicable even to the premises which are let out for business purpose.

14. So far as issue of non-joinder of necessary party i.e. M.I.D.C. is concerned, if the said submissions are tested in the light of necessity of M.I.D.C. to be a party to the proceedings, it is required

to be noted that, it is not the case of the petitioner that M. I. D. C. has not leased out the property in favour of respondent, rather by admitting leave and licence agreement and in view of Exhibit 26 lease deed executed by M.I.D.C. in favour of present respondent, in my opinion, M.I.D.C. is not necessary party to the landlord tenant dispute. It is also admitted by the petitioner that he was paying rent to the respondent herein and there is no privity of contract between M. I. D. C. and the petitioner-tenant.

15. The next submission of the petitioner is Exhibit 26 and 27 were wrongly construed by the Courts below, as proved. It is required to be noted herein that, both these documents, i.e. registered lease deed Exhibit 26 in favour of respondent by M.I.D.C. and leave and license agreement Exhibit 27 are in fact admitted by the present petitioner. Once these documents are admitted by present petitioner during his evidence, it is not open for him to turn around and say at this juncture that both these documents were not admissible in evidence. In any case, this Court under Article 227 can not re-appreciate the evidence and give finding other than one recorded by both the Courts below in absence of any material infirmity.

16. Apart from above, it is also required to be noted herein

that learned Civil Judge, Junior Division, while dealing with the claim, has written detailed judgment, failing which each of the aspect as were raised before him including that of change of user, non-payment of license fees, entitlement of the respondent towards damages.

17. Though learned lower appellate Court has not framed specific points for its consideration, however, in para 10 of the judgment, lower appellate Court has observed that crucial point that was raised in the appeal for decision is, in view of section 30 of the M.I.D.C. Act, whether the Court has jurisdiction or not and has proceeded to deal with the said controversy in its detail.

18. In my opinion, lower appellate Court has dealt with the issue that was argued and espoused before it.

19. In this background, in my opinion, no case for interference is made out in the present writ petition. Writ Petition, as such, fails, stands dismissed.

20. In view of dismissal of writ petition, civil application stands disposed of.

**[ N.W. SAMBRE, J. ]**