

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

**WRIT PETITION STAMP NO.8514 OF 2017**

**Ms. Karishma D/o Ravi Kapur and others** **..Petitioners**

**Versus**

**Divisional Commissioner,  
Konkan Division and others** **..Respondents**

**Mr. Karl Tamboly a/w Ms. Sneha Prabhu a/w Mr. S. S. Sinha for the  
Petitioners.**

**Mr. Shubhabrata Chakraborti a/w Mr. Durgesh Khanapurkar, Mr.  
Vaibhav Wali i/by Juris Corp for the Respondent No.3.**

**CORAM : R. M. SAVANT, J.  
DATE : 29<sup>th</sup> MARCH, 2017**

**PC.**

1           The writ jurisdiction of this Court is invoked against the order dated 01.02.2017 passed by the Additional Commissioner, Konkan Division, by which order, the Revision Application filed by the Petitioners herein came to be dismissed and resultantly the order dated 16.09.2016 passed by the Competent Authority, Konkan Division in Case No.6 of 2006 came to be confirmed.

2           The Respondent No.3 had filed the application in question before the Competent Authority under Section 24 of the Maharashtra Rent Control Act, 1999 (For short “the said Act”) for possession of the premises in question on the ground that the Petitioners herein i.e. the

Respondents to the application had overstayed the licence period. It was the case of the Applicant that by Leave and Licence agreement dated 28.02.1994 licence was granted for a period of 11 months and was therefore due to expire on 27.01.1995. It was the case of the Applicant that in good faith on account of the relations between the parties she did not bother to have second look at the said agreement. However later on she found that the Petitioners herein had fraudulently by hand had converted the expiry date from 27.01.1995 to 27.01.1998. It was the case of the Applicant that the compensation payable under the licence agreement was in the sum of Rs.6000/- per week. Since the licence period had expired and the Petitioners failed to vacate the premises in question. The Applicant had called upon the Respondents to vacate and hand over the possession of the premises in question but since the Respondents failed to vacate the suit premises and also failed to make compensation and the reimbursement of the monthly outgoings that the Respondent No.3 was constrained to file the application for their eviction and possession.

3           In so far as the Petitioners herein are concerned, it was their case that Competent Authority had no jurisdiction to try and entertain the application as there was no relationship of licensor and licensee. It was their case that on account of certain transactions out of which they

had earned substantial capital gains and to save the long term capital gains the Applicant was required to show that she had purchased the said residential premises. The husband of the Applicant wanted them to sell the suit premises on paper to show the same to the Income Tax authorities. It was therefore their case that the suit premises would be shown on paper as being sold to the Applicant and that the Applicant would show payment of consideration by cheques to the Respondent Nos.2 and 3 and their three daughters which amounts were to be returned back to the Applicant through her nominees or by cash. It was their case that accordingly an agreement for sale was drawn up on 20.02.1991. In spite of the execution of the Agreement to Sale the Petitioners continued to occupy the suit premises. A Leave and Licence agreement dated 05.10.1992 followed by supplementary agreement dated 06.10.1992 was executed between the parties. It was also the case of the Petitioners that the weekly compensation at Rs.6000/- was also not as per the regular practice of making payments under a Leave and Licence agreement. It was their case that mere submission of the purported sale agreement and Leave and Licence agreement was of no avail as they were not admissible in evidence. The Petitioners had therefore sought the dismissal of the application filed by the Respondent No.3.

4           The Competent Authority on the basis of the pleadings of the parties framed issues, amongst which was the issue as to whether the Respondent No.3 was the owner of the suit premises, whether the Applicant proves that the Respondents are her licensees and whether the Applicant proves that the licence period had expired and she is entitled to recover the possession of the suit premises. On behalf of the Applicant the original Leave and Licence agreement dated 28.02.1994 was produced amongst other documents. The Competent Authority having regard to the fact that it was only required to consider whether there was existence of Leave and Licence agreement, and relationship of Licensor and Licensee whilst adjudication of the application under Section 24 of the said Act, accordingly recorded a finding that the Petitioners/Respondents in the application are in possession on the basis of the Leave and Licence agreement and that the Respondent No.1 was a licensee in respect of the suit premises. The Petitioners i.e. the Respondents in the proceedings did not produce any documents in support of their assertion. The Petitioners it seems admitted the Leave and Licence agreement in their application for leave to defend but submitted that the Leave and Licence agreement was a formality. The Competent Authority also recorded a finding as regards the ownership of the Respondent No.3 as regards the premises in question are concerned. The Competent Authority by its order dated

16.09.2016 allowed the said application and directed the Respondents to hand over the quiet, vacant and peaceful possession of the premises in question i.e. Flat Nos.A-701 & A-702, 7<sup>th</sup> Floor, Versova Venus Co-operative Housing Society Ltd., 4<sup>th</sup> Cross Road, Lokhandwala Complex, Andheri (West), Mumbai-400 053 along with two covered car parkings (Garages) P-2 & P-8 to the applicant.

5           The Petitioners herein carried the matter in Revision by filing Revision Application No.1136 of 2016 before the Additional Commissioner, Konkan Division. The Additional Commissioner, Konkan Division, Mumbai has by the impugned order dismissed the Revision. The Additional Commissioner, Konkan Division has confirmed the findings of the Competent Authority in so far as the ownership of the premises are concerned as also as regards the possession of the Petitioners on the basis of the Leave and Licence agreement dated 28.02.1994 and the breach of the said Leave and Licence agreement. The Revisionary Authority held that there was a Licensor and Licensee relationship between the parties and that the Petitioners had not produced any material in support of their contention that they were the owners of the said suit premises. Having regard to the aforesaid facts the Revisionary Authority i.e. Additional Commissioner did not find any reason to interfere with the order passed by the Competent Authority and accordingly dismissed the Revision.

6           The Learned Counsel appearing on behalf of the Petitioners Mr. Karl Tamboly would contend that the Competent Authority had committed a jurisdictional error in entertaining the application when the application was founded on an unregistered Leave and Licence agreement. It was also the submission of the Learned Counsel that the Competent Authority has entered into the arena of determining the title of the premises in question when all it was required to consider was whether the relief sought vide the application filed by the Respondent No.3 was required to be granted. The Learned Counsel in support of his submission that an unregistered document i.e. Leave and Licence agreement could not be relied upon, has relied upon Section 55 of the said Act, which postulates the registration of the Leave and Licence agreement which has been executed after coming into force of the said Act and also mentions the consequences of non-registration of such a document.

7           In my view, it is not possible to accept the contentions of the Learned Counsel Mr. Karl Tamboly. In so far as the instant case is concerned, as indicated above the Leave and Licence agreement has been executed on 28.02.1994 i.e. prior to the Maharashtra Rent Control Act, 1999 coming into force and therefore the requirement of the Leave and Licence agreement being registered is not applicable. In so far as the

proceedings for eviction and possession based on an unregistered document i.e. Leave and Licence agreement is concerned, the said issue is no more res-integra, and is covered by the judgment of a Learned Single Judge of this Court reported in (2005)4 Bom.C.R. 383 in the matter of **Raj Prasanna Kondur Vs. Arif Taker Khan and others**, wherein the Learned Single Judge of this Court has held that jurisdictional fact which is required for the competent authority to entertain the application for eviction under Section 24 of the said Act is the expiry of licence for residence in favour of the person occupying the premises and moment the same is disclosed based on whatever material placed before the competent authority, it will empower the competent authority to take cognizance of such application and to proceed to deal with the matter. The Learned Single Judge in the said judgment has held that the said Section 24 nowhere provides that the licence has necessarily to be either in writing or that the agreement in that regard has necessarily to be a registered one.

8            In the instant case, as indicated above, on the basis of the material which was on record, both the Authorities have concurrently held that there was a Leave and Licence agreement dated 28.02.1994 which governed the relationship between the parties that the period of licence has come to an end and therefore the eviction of the Petitioners

i.e. Respondents was required to be ordered. In my view, the Competent Authority recording a finding as regards the title to the suit premises which was confirmed by the Revisionary Authority would not make any difference in so far as the final outcome of the proceedings are concerned. In that view of the matter, no case for interference in the writ jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

9                However, it is clarified that if any suit on title is filed by the Petitioners, the same would be tried on its own merits and in accordance with law.

10              At this stage, the Learned Counsel for the Petitioners Mr. Karl Tamboly prays for stay of the instant order for a period of four weeks so enable the Petitioners to approach the Apex Court. In the facts and circumstances of the case, the instant order is stayed for a period of four weeks from date.

**[R.M.SAVANT, J]**