

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2311 OF 2018

Sau Sumati Dattatraya Kulkarni,
Age: 85 years, Occupation : Household,
Through her Special Power of Attorney
Shri.Ghanahshyam Dattatraya Kulkarni
Age : 65 years, Occupation : Retired
Resident of : CTS No. 4115 –
K. “Shramsaphaya” Masterwadi,
Neharunager, Deopure, Dhule,
District Dhule

...Petitioner
(Org. Applicant/Appellant)

Versus

Smt. Kalpana Nitin Pathak,
@ Kalpana Ramesh Shukla,
Age: 40 years, Occupation : Service,
Resident of : CTS No. 4115 -K,
“Shramsaphaya”, Masterwadi,
Neharunager, Deopure, Dhule,
District Dhule, At present C/o Dr. Rajkumar
B. Sharma, Plot No.2/A, Shivshakti Colony,
Chitod Road, Dhule.

...Respondent
(Org. Respondent/Respondent)

Mr. M.S. Kulkarni, Advocate for Petitioner
Mr. C.R. Deshpande, Advocate for Respondent

CORAM : P.R. BORA, J.

DATE : 15th JULY, 2019

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally with consent of the learned counsel appearing for the parties.

2. The order passed by the competent authority under the provisions of section 24 of The Maharashtra Rent Control Act ("the Rent Act" for short) in Application No. 11/2013 on 22.11.2016, which has been confirmed in Revision Application No. 183/2017 by the Additional Divisional Commissioner, vide his Judgment and order passed on 18.11.2017 is impugned in the present Petition.

3. An application was filed by the petitioner before the competent authority against the respondent seeking her eviction on expiry of the period of license. It is the case of the petitioner that, the premises mentioned in para No.1 of her application were occupied by the present respondent on the basis of the leave and license agreement entered between her and the present petitioner. According to the petitioner, the agreement was executed on 05.04.2012. As per the said agreement, the suit premises were given for residence of the respondent on license for the period of only four months i.e. from June, 2012 to September, 2012 on the license fees @ Rs.1500/- per month. Respondent since did not vacate the suit premises even after expiry of the period of license, a notice was issued by the petitioner to the respondent, calling upon her to vacate the premises. Since even thereafter, respondent did not vacate the suit premises, the proceedings were initiated by her through her Power of Attorney holder before the competent authority under the Rent Act.

4. The application preferred by the petitioner was resisted by the respondent on various grounds. It was the contention of the respondent that leave and license agreement allegedly executed between her and the petitioner was camouflage, and in fact, the said premises were in possession of her mother and the other family members since prior to about 40 years of executing the said agreement. It was also her contention that, way back in the year 1998, an agreement of sale was executed in favour of her mother in respect of the suit premises, which were already in possession. It was also her contention that on the date of execution of the leave and license agreement, the suit premises were not in possession of the petitioner. It was also her contention that her signature on the leave and license agreement was fraudulently obtained, and as such, according to her, the said leave and license agreement was not liable to be acted upon. On the aforesaid ground, the prayer was made by her to reject the application filed by the petitioner.

5. The learned competent authority after having considered the submissions made by the parties and considering the documents which were placed before the said authority, rejected the application vide its order dated 22.11.2016.

6. The petitioner then preferred Revision Application No.183/2017 before the Additional Divisional Commissioner at

Nashik. However, the said revision also came to be dismissed vide order passed on 18.11.2017. Both the aforesaid orders are questioned by the petitioner in the present Petition.

7. Shri. Mukul Kulkarni, the learned Counsel appearing for the petitioner assailed the Judgment passed by the authorities below on various grounds. The learned Counsel inviting my attention to the issues framed by the competent authority in the application before it and findings recorded thereon submitted that once the execution of leave and license agreement was admitted, the contents thereof were liable to be held to have been proved. The learned Counsel read out Section 24 of the Act, and more particularly, Sub Section 3 (b) thereof. The learned Counsel further submitted that during pendency of the application before the competent authority, the agreement of leave and license was impounded. The learned Counsel submitted that the registration of the said agreement was not mandatory. The learned Counsel further submitted that even the alleged plea taken by the respondent about her previous possession over the suit premises also would not have come in the way of allowing the application by the competent authority on the basis of the leave and license agreement which was duly proved and the execution of which was admitted by the respondent. The learned Counsel submitted that the authorities below have failed in appreciating the import of provisions of section 24 of the Rent Act,

which has resulted in passing erroneous orders by them. The learned Counsel in the circumstances, prayed for setting aside the orders impugned in the present petition and to allow the application filed by the petitioner before the competent authority.

8. Shri. C.R. Deshpande, the learned Counsel appearing for the respondent supported both the orders, challenged in the present petition. The learned Counsel, relying on the Judgment of the Hon'ble Apex Court in the case of **Smt. Kirpal Kaur Vs. Bachan Singh and Others AIR 1958 SC 199**, submitted that the nature of possession was material while considering the request of the present petitioner of seeking decree of eviction against the present respondent. The learned Counsel further submitted that the said judgment also speaks of the compulsory registration of the document of leave and license for its admissibility in the evidence. The learned Counsel submitted that in the instant matter, the leave and license agreement is undisputedly not registered. According to the learned Counsel, in the circumstances, having regard to the provisions under section 55, more particularly, Section 55 (e) of the Maharashtra Rent Control Act, no decree could have been passed and cannot be passed on the basis of the unregistered agreement relied upon. The learned Counsel further submitted that ample evidence has come on record and the clear admissions are recorded of the applicant before the competent authority and the witness

examined on her behalf evidencing that the petitioner was not in possession of the suit property, but the mother of the present respondent was in actual possession of the said property on the date on which the leave and licence agreement is stated to have been executed between the parties. The learned Counsel further submitted that since no fault can be found in the findings on facts recorded by the authority below, there is little scope for this Court to cause any interference in the said orders under Article 227 of the Constitution of India. On all aforesaid grounds, the learned Counsel prayed for dismissal of the Writ Petition.

9. Perusal of the judgment delivered by the competent authority reveals that it has rejected the application filed by the petitioner mainly on the ground that the petitioner has failed in establishing that the possession of the respondent over the suit premises is only as a licensee of the said premises and not in any other capacity. In the last but one paragraph, while answering issue No. 5, the competent authority has observed that unless it is established that the relation between the parties to the application before it under section 24 of the Rent Act is only of licensor and licensee and not other than that, the competent authority does not get the jurisdiction to decide the dispute between such parties.

10. The learned Additional Divisional Commissioner in the

Revision Application has affirmed the findings recorded by the competent authority. The learned Additional Divisional Commissioner has gone one step ahead in observing that the possession of the present respondent over the suit premises is not proved to be on the strength of the leave and license agreement between them.

11. The findings recorded by the aforesaid two authorities while are criticized by Shri. Mukul Kulkarni, the learned Counsel appearing for the petitioner; are supported by Shri. C.R. Deshpande, the learned Counsel appearing for the respondent.

12. Since the application was under section 24 of the Rent Act and the decision rendered therein is the subject matter in the present petition, I deem it appropriate to reproduce herein-below the entire said section which reads thus -

24. Landlord entitled to recover possession of premises given on licence on expiry.

(1) Notwithstanding anything contained in this Act, a licensee in possession or occupation of premises given to him on licence for residence shall deliver possession of such premises to the landlord on expiry of the period of licence; and on the failure of the licensee to so deliver the possession of the licensed premises, a landlord shall be entitled to recover possession of such premises from a licensee, on the expiry of the period of licence, by making an application to the Competent Authority, and,

the Competent Authority, on being satisfied that the period of licence has expired, shall pass an order for eviction of a licensee.

(2) Any licensee who does not deliver possession of the premises to the landlord on expiry of the period of licence and continues to be in possession of the licensed premises till he is dispossessed by the Competent Authority shall be liable to pay damages at double the rate of the licence fee or charge of the premises fixed under the agreement of licence.

(3) The Competent Authority shall not entertain any claim of whatever nature from any other person who is not a licensee according to the agreement of licence.

Explanation. - For the purpose of this section, -

(a) the expression "landlord" includes a successor-in-interest who becomes the landlord of the premises as a result of death of such landlord; but does not include a tenant or a sub-tenant who has given premises on licence;

(b) an agreement of licence in writing shall be conclusive evidence of the fact stated therein.

13. Perusal of the impugned orders apparently demonstrate that both the authorities have failed in appreciating the aforesaid provision in its proper spirit and perspective.

14. In the instant matter, as has been held by the competent authority as well as the learned Additional Divisional Commissioner,

the present respondent has admitted the execution of an agreement of leave and license between her and the petitioner. In the written statement filed by the respondent before the competent authority, she has admitted that she had signed the leave and license agreement. Of course, it is her further contention that her signature on the said agreement was obtained by coercion. In view of such specific plea raised by the respondent in her written statement, the competent authority had framed specific issue in that regard - "Whether the respondent proves that the plaintiff by falsely representing that the sale deed is to be executed of the subject premises fraudulently obtained her signature on the leave and license agreement on 05.04.2012". After having considered the evidence on record, the competent authority has recorded a negative finding on the said issue holding thereby that the respondent has failed in substantiating her said defence. The competent authority has also observed that the defence so raised by the respondent does not appear to be believable or trustworthy.

15. In light of the finding recorded by the competent authority on the basis of the evidence which was adduced before it, there was no reason for the said authority to travel beyond the provision under section 24 of the Rent Act. Section 24 (3) (b) clearly lays down that an agreement of leave and license in writing shall be conclusive evidence of the facts stated therein.

16. The aspect of possession over the suit property prior to execution of leave and license agreement was much canvassed by Shri. C.R. Deshpande, the learned Counsel appearing for the respondent. Relying upon the judgment of the Hon'ble Apex Court in the case of ***Smt. Kirpal Kaur Vs. Bachan Singh and Others AIR 1958 SC 199***, the learned Counsel submitted that the agreement between petitioner and the respondent cannot be admitted in evidence to show the nature of possession of the respondent subsequent to its date, the respondent being in possession of the suit house since before the date of the said agreement.

17. There cannot be a dispute about the law laid down in the aforesaid judgment. However, it has to be respectfully stated that in the facts of the present case, the law laid down in the aforesaid case, may not apply. As against it, in the similar set of facts, as are existing in the present matter, this court in the case of ***Shakeel Ahmed Fateh Mohd. Sundke Vs. Aziz Ahmed Khan 2008 (6) Mh.L.J. 418***, has held that *once the execution of the agreement is admitted, the plea that section 24 of the said Act is not attracted, in view of the fact that the licensee was in possession of the said licenced premises prior to the execution of the agreement of leave and license, is of no consequence and has to be rejected.*

18. In the present matter also, when the respondent has specifically admitted the execution of the agreement of leave and license, the plea raised by her that she was in possession of the licenced premises prior to the execution of the agreement of leave and license is of no consequence and must be rejected.

19. Moreover, as was submitted by Shri. Mukul Kulkarni, the learned Counsel appearing for the petitioner, the contentions so raised by the respondent was factually also incorrect. The petitioner has placed on record the copy of the Application H.M.P. No. 536/2011 filed against the present respondent by her husband in the Court of Civil Judge, Senior Division at Jalgaon. In the said application, the address of the present respondent is mentioned as Plot No. 20, House of Shri. Lobhan, Professor Colony, Deopur, Tal. and Dist. Dhule. The learned Counsel submitted that the aforesaid Hindu Marriage Petition was filed in the year 2011. It was further submitted by Shri. Kulkarni that the documentary evidence as aforesaid negates the contention of the present respondent that she was in possession of the suit premises much prior to the execution of the leave and license agreement, which was admittedly executed on 05.04.2012. The learned Counsel Shri. Kulkarni also brought to my notice that whatever documents were produced by the petitioner before the competent authority in support of her plea that she was in occupation of the suit premises prior to execution of the leave and

license agreement are of the period either prior to her marriage or after the date of execution of the leave and license agreement.

20. One more objection has been raised by Shri. Deshpande as about the compulsory registration of the document of leave and license agreement so as to rely upon the said document and admit it to be evidence in the matter. The learned Counsel has referred to section 55 (1) and (2) of the Rent Act to support his contention. The aforesaid aspect has been dealt with by this Court in the case of ***Raj Prasanna Kondur Vs. Arif Taher Khan & Ors. 2005 (4) Bom. C.R. 383.*** My attention was invited by Shri. Mukul Kulkarni, the learned Counsel appearing for the petitioner, towards the discussion made and the conclusions recorded in para Nos. 8, 12, 18 and 22 of the said judgment. This Court has in clear terms observed in para No. 18 of the said judgment that “ non-registration of the agreement will not affect the right of the landlord to seek eviction of the licensee on the expiry of the license period nor the delay in presenting the agreement for registration will come in the way of the competent authority in taking cognizance of the application of the landlord on expiry of the license to the person in occupation of the premises of the landlord.”

21. In para No. 16 of the said judgment, it is further observed that “ *the provisions comprised under section 55 (1) of the Rent Act*

cannot be read with the provisions of section 17 of the Registration Act, 1908, and for the same reason, the provisions of section 49 of the Registration Act, 1908 would not be attracted in relation to the agreement for leave and license”.

22. It was also argued by Shri. Deshpande that this court has a little scope under Article 227 of the Constitution of India to cause interference in the concurrent findings on facts recorded by the authorities below on the basis of the evidence brought before the said authorities.” The reliance was placed by the learned Counsel on the judgment of the Hon'ble Apex Court in the case of ***Mrs. Rena Drego Vs. Lalchand Soni, etc. AIR 1998 SC 1990*** as well as on the another judgment of the Hon'ble Apex Court in the case of ***Sukhbir Narian (dead) by LRs. Vs. Deputy Director of Consolidation AIR 1987 SC 1645***. There cannot be a quarrel about the law laid down by the Hon'ble Apex Court in the aforesaid judgments. Nevertheless, when both the authorities have grossly erred in interpreting the provision under section 24 of the Rent Act, this Court can certainly exercise its jurisdiction under Article 227 of the Constitution of India for correction of the said error.

23. After having considered the evidence on record and the relevant legal provisions in the Rent Act, it appears to me that once the factum of execution of leave and license agreement between the

petitioner and the respondent was established and when it was also established that the period of license has expired, the competent authority was left with no alternate than to order the eviction of the respondent whose license to occupy the premises has come to an end. I reiterate that in view of the findings recorded by both the authorities that the execution of leave and license agreement was admitted by respondent and the further finding recorded by the competent authority that the respondent has failed in establishing her plea that her signatures were fraudulently and under coercion obtained on leave and license agreement, the authorities below could not have rejected the application filed by the petitioner on the ground that the relationship between the petitioner and the respondent has not been proved only to be of licensor and licensee. As I noted herein-above, the competent authority as well as the learned Additional Divisional Commissioner have gone wrong in entering into the aspect of possession. The order passed by both the authorities, therefore cannot be sustained.

24. In the foregoing circumstances and the reasons discussed by me herein-above, the following order is passed :-

ORDER

- (i) The orders passed by the competent authority in Application No. 11/2013 dated 22.11.2016 and by the Additional Divisional Commissioner in Revision Application

No. 183/2017 on 18.11.2017 are quashed and set aside.

- (ii) The respondent is directed to hand over the possession of the suit premises to the petitioner within a period of two months from the date of this order.
- (iii) The respondent shall pay to the petitioner, the arrears of rent till filing of the suit as stated in prayer clause (C) of the Application filed by the petitioner before the Competent Authority.
- (iv) The respondent shall be liable to pay to the petitioner the double of the amount of agreed compensation for being in occupation of the license premises from October, 2012 till she hands over the possession of the license premises to the petitioner.
- (v) The Writ Petition stands allowed in aforesaid terms.
- (vi) Rule made absolute in above terms.

[P.R. BORA]
JUDGE

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