

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

WRIT PETITION NO.8000 OF 2018

Manilal Mangilal Parekh,
Age : 47 years, Occu. Business,
R/o. 18, Parekh Nagar, Jalgaon,
Taluka & District - Jalgaon.

... **Petitioner**

Versus

Narendra Bhikulal Jaiswal,
Age : 45 years, Occu. Business,
R/o. 8, 9, Madhuban Apartment,
Scheme No.2, Building No.6,
Jalgaon, Taluka & District – Jalgaon.

... **Respondent**

...
Mr. Girish Rane, Advocate for Petitioner.
Mr. S.S.Bora, Advocate for Respondent.
...

CORAM : V. K. JADHAV, J.

**RESERVED ON : 28.11.2019
PRONOUNCED ON : 04.03.2020**

JUDGMENT :-

1. Rule. Rule made returnable forthwith. Heard finally with consent of the parties at admission stage.

2. This Writ Petition challenges the order dated 16.06.2017 passed in application No.5 of 2014 by the competent authority Rent Control Act Court, Nashik Division, Nashik and the

judgment and order dated 25.01.2018 passed by the Additional Commissioner, Nashik Division, Nashik in Rent Control Revision (RTS) No.637 of 2017 confirming thereby the order passed by the competent authority.

3. Brief facts giving rise to the Writ Petition are as under :

The petitioner is the original applicant before the competent authority / Rent Control Act Court, Nashik Division, Nashik. The suit property is Flat No.8, measuring 25.28 Sq. Mtrs. and Flat No.9 measuring 31.50 Sq. Mtrs., situated at CTS No.8400, Madhuban Apartment, Scheme No.2, Building No.6, situated at Jalgaon. The said property i.e. both the flats are on second floor of the building and by removing the common wall both flats are merged into one and the petitioner instituted application No.5 of 2014 for recovery of the suit property along with the arrears of licence fees to the tune of Rs.64,000/- and the damages @ Rs.8,000/- per month coupled with the cost of the proceeding. It was *inter-alia* contended therein that one leave and licence agreement dated 22.08.2011 written on stamp of Rs.100/- duly authorized, notarized came to be executed between the petitioner and the respondent for a

period of 24 months starting from 22.08.2011 to 21.08.2013 @ Rs.4,000/- per month towards the licence fees exclusive of other taxes and water charges. It has been further contended in the said application No.5 of 2014 that the respondent did not pay the licence fees for preceding 16 months and despite completion of the license period, the vacant possession was not handed over. The petitioner has therefore, issued a notice dated 20.09.2013 and claimed arrears of licence fees and possession. The respondent has replied the said notice on 29.11.2013. It has further contended in the said application that despite the same neither the vacant possession nor the license fees has been paid to the petitioner and hence he was constrained to file the application No.5 of 2014.

4. After service of the notice, the respondent appeared and sought leave to contest the application which was granted by the competent authority. Accordingly, the respondent has filed his written statement on 08.07.2014 and thereby denied all the adverse allegations levelled against him. It has been contended that the said leave and license agreement was not executed with an intent to create the relationship of licensee and licensor and the suit property was owned by the parents of the

respondent since 1990 and for last 19 years they are in possession thereof and residing therein along with the family members. It has also been contended that in order to clear the loan obtained by the parents for purchasing those flats, the respondent and his parents approached the petitioner and obtained certain amount from him as a hand loan, however, for the security of the hand loan nominally the parties shown to have been entered into a sale transaction in respect of the suit property. It is also contended that in order to show that the possession has been delivered, the leave and licence has been prepared and executed. It was agreed between them about the re-conveyance of the properties as soon as the amount obtained from the petitioner as a loan is cleared. It further contended that the petitioner by taking disadvantage of the said registered document, raised a loan mortgaging the said property.

5. It is a matter of record that during the pendency of application No.5 of 2014, the penalty of Rs.5,000/- was paid on 07.06.2014 as per the provisions of Section 55 of the Maharashtra Rent Control Act, 1999 (herein after referred to as 'Act of 1999') and regularized the leave and licence agreement.

It is also stated in the original application itself that the said agreement also impounded.

6. After completion of the pleadings, the competent authority framed the issues. In order to substantiate the claim, the petitioner has filed his affidavit of examination-in-chief. However, for two years the respondent did not cross-examine the petitioner. Hence, the no cross order came to be passed against the respondent. The respondent did not lead any evidence. After hearing both the sides, the competent authority, Rent Control Act Court, Nashik Division, Nashik has dismissed the application No.5 of 2014 by judgment and order dated 16.06.2017 holding that the leave and license agreement is sham. Being aggrieved by the judgment and order dated 16.06.2017 passed in application No.5 of 2014, the petitioner has preferred the revision application No.637 of 2017 before the Commissioner of Nashik Division, Nashik. The learned Additional Commissioner by his impugned judgment and order dated 25.01.2018 dismissed the Rent Control Revision No.637 of 2017. Hence, this Writ Petition.

7. The learned counsel for the petitioner submits that in view of the provisions of Section 24(3)(b) of the Act of 1999, an agreement of licence in writing shall be a conclusive evidence of the facts stated therein. The learned counsel submits that the parties are shut out from leading the evidence to demonstrate that the agreement was not leave and licence agreement. The learned counsel submits that both the authorities below erroneously held that the leave and licence agreement is sham. It is pertinent that on the basis of the mentioning of the address of the respondent in the said agreement as the address of his shop, drawn the conclusion to that effect. The learned counsel submits that both the authorities below has no jurisdiction, competence and authority to declare the agreement of license to be sham and bogus. The learned counsel submits that the petitioner was not subjected to cross-examination by the respondent nor the respondent to lead an evidence to substantiate his contention. Even the respondent did not offer himself for cross-examination by entering into a witness box which calls for drawing an adverse inference. The learned counsel submits that both the authorities below ought to have appreciated that

by way of the transfer deed executed on 02.08.2011, the petitioner is a owner of the suit property. The said transfer deed has not been called in question before any competent civil court by the respondent, till this date. Both the authorities below ought to have directed by handing over the possession, arrears of licence fees and damages as prayed in the application. This Writ Petition deserves to be allowed by quashing and setting aside the impugned orders.

8. The learned counsel for the petitioner placed his reliance in following two cases :

- (i) ***Rajendra B. Nair Vs. Suresh D. Dyanmothe and another***, reported in ***2002(4) Mh.L.J., 93.***
- (ii) ***Amit B. Dalal Vs. Rajesh K. Doctor***, reported in ***2010(7) Mh.L.J., 1.***

9. The learned counsel for the respondent submits that the so called leave and licence agreement is sham and bogus document. The learned counsel submits that the suit property was owned by the parents of the respondent since 1990 and for last 19 years they are in possession thereof, residing thereon along with the family members. The learned counsel

submits that the parents of the respondent has raised a loan of Rs.75,000/- each from M.H.F.C., Jalgaon, however, as the said loan could not be repaid, the suit property was put to auction. Thus, the respondent and his parents approached to the petitioner with intervention of one Somnath Gurav. The petitioner had agreed to advance the financial help to the parents of the respondent, however, put a condition of execution of the sale deed against Rs.5,00,000/- and interest of Rs.4,000/- per month to be paid till the repayment thereof which was to be completed within two years. The learned counsel submits that in order to show that after execution of the sale deed, the possession was handed over and thereafter the respondent was put in possession, the document of leave and licence was executed. The learned counsel submits that in pursuance to the aforesaid transactions, the parents of the respondent cancelled their membership of the Co-operative Housing Society and executed notarized leave and licence agreement. The learned counsel submits that the partial repayment has been made and the respondent is ready to pay the rest of the amount and get the re-conveyance. The petitioner by taking disadvantage of the said registered

documents, raised a loan by mortgaging the said property. The learned counsel submits that in the so called agreement of leave and licence, the shop address of the respondent is mentioned. It is difficult to believe that the respondent along with his family members was residing in the shop and in terms of the so called leave and licence agreement shifted in the suit property. The learned counsel submits that the said aspect of mentioning the address in the manner as detailed above, itself indicates about the false and sham execution of the leave and licence agreement. The learned counsel submits that the competent authority has rightly appreciated the same and dismissed the original application No.5 of 2014. The learned counsel submits that the agreement of leave and licence is not registered. The learned counsel submits that in terms of Sub Section (1) of Section 55 of the Act of 1999, a leave and license agreement should be registered under the Registration Act, 1908. The learned counsel submits that in terms of the provisions of Chapter VIII of the Act of 1999 the special procedure which is summary in nature is prescribed for disposal of the applications. The learned counsel submits that the competent authority therefore, correctly held that in the

light of the defence raised by the respondent, the competent authority has no jurisdiction to decide the matter within the frame work of the provisions of the Act of 1999 and it would be just and equitable for the parties to approach the civil court. The learned counsel submits that the revisional authority has also taken the same view and dismissed the revision preferred by the petitioner. There is no substance in this Writ Petition and the Writ petition is liable to be dismissed.

10. On going through the pleadings of the parties, the evidence and the impugned orders passed by the authorities below, I am of the opinion that both the authorities have not correctly dealt with the issue involved in the matter. In terms of the provisions of Section 24 Sub Section (3) Clause (b) of the explanation an agreement of license in writing shall be exclusive evidence of the fact stated therein. Section 24 of the Act of 1999 thus reads as under :

“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 purposes 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.”

11. In the instant case, the leave and licence agreement placed on record is discarded in the light of the defence raised by the respondent and the address of the respondent as mentioned in the leave and licence agreement substantiate the defence of the respondent. These observations are contrary to the provisions of Section 24(3) clause (b) of the explanation.

It is to be mentioned here that the respondent after admitting the execution of the leave and licence agreement though raised the various defences, failed to substantiate the same either by leading oral or documentary evidence or by entering into a witness box. It further appears that even though there is no evidence adduced to substantiate the pleadings of the respondent, the authorities below have considered the defence raised by the respondent on the basis of his written statement to some extent.

12. In a case of *Rajendra B. Nair Vs. Suresh D. Dyanmothe and another*, reported in 2002(4) *Mh.L.J.*, 93, this Court (Coram : Dr. D.Y.Chandrachud, J.) dealt with the similar issue in terms of the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, which provisions are *para materia* to Section 24 of the Act of 1999, and held that the agreement was one by which the licence pure and simple was created in favour of the respondent. Explanation (b) to Section 13(A)(2) must be given effect and its consequence is that the parties are shut out from leading evidence for the purpose of demonstrating that the agreement was not a leave and licence agreement. In paragraph Nos.9 and 11 of the

judgment, the following observations have been made :

“9. 'Section 13-A2 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 has been introduced by amendment in order to provide a speedy remedy for the purpose of the recovery of possession of premises given on licence, on the expiry of the licence. Prior to the enactment of Section 13-A2, a great deal of legal ingenuity would be devoted to determining whether a Leave and Licence agreement was in fact an agreement of licence or of tenancy. A significant body of law had developed on the subject. Section 13-A2 now provides that notwithstanding anything contained in the Rent 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. 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 by making an application to the competent authority. The competent authority, on being satisfied that the period of licence has expired, shall pass an order for eviction of the licensee. Sub-section (2) of Section 13-A2 then provides that any licensee who does not deliver possession of the premises on the expiry of the period of licence and continues to be in possession until 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. Under Sub-section (3), the competent authority is directed not to entertain any claim of whatever nature from any other person who is not a licensee according to the agreement of licence. Explanation (b) to the section provides that for the purposes of the section an agreement of licence in waiting shall be conclusive evidence of the fact stated therein. In other words, the mandate of explanation (b) is that once there is a written

agreement, it shall be conclusive evidence of the facts which are contained therein. Consequently, it would not be open to the parties to lead evidence to establish that what was in fact, stated to be an agreement of licence in writing, was not an agreement of licence but of tenancy. The legislative mandate of making the written agreement conclusive evidence of the facts stated therein has to be given full force and effect. These provisions have been interpreted in several judgments of the learned single Judges of this Court and it would be convenient to make reference to those judgments.

11. The first agreement of Leave and Licence was entered into on 10th July 1991 and expired on 10th June 1992, The agreement which was entered into between the parties on 9th September 1992 which is the second agreement, expressly provides that what was being agreed upon between the parties was that the licensor would allow the licensee to use and occupy the premises purely on a temporary basis on leave and licence, for a period of three months. Clause 1 expressly provides that the licensor grants a licence to the licensee. It is true that the word "rent" has been used in Clause 2 while referring to the payment of compensation fixed at Rs. 3500/- per month. That in my view would not make any difference because it is a well settled principle of law that the mere use of words such as "rent" or for that matter "compensation" would not be dispositive of the legal relationship between the parties. Clause 8 of the agreement gives free access to the premises to the licensor at all reasonable times for inspection. Clause 10 recognises that the possession of the licensee would be non-exclusive and would be only temporary. Clause 11 provides that the licence could be revoked. Finally, Clause 14 expressly stipulates that the licence would not create any tenancy. Therefore, the mere reference in Clause 12 to the fact that the licensee will not let or sublet the premises, cannot be construed to mean that a right of tenancy

was created in favour of the licensee. The agreement is one by which a licence pure and simple was created in favour of the Respondent. Explanation (b) to Section 13-A2 must be given effect and its consequence is that the parties are shut out from leading evidence for the purpose of demonstrating that the agreement was not a leave and licence agreement. The provisions of the agreement which have been adverted to above clearly establish that the agreement was in fact and in law what it purported to be namely, an agreement by which a licence to occupy the premises was given to the respondent for a temporary period of three months. This needs emphasis, because quite apart from the provisions of explanation (b) which would have the effect of shutting out oral evidence to the contrary, the plain terms of the agreement show that it was one of leave and licence.”

13. In paragraph No.12 of the judgment, the following observations have been made :

“12. The pendency of the declaratory suit which has been filed by the respondent before the Small Causes Court cannot detract from the legal position which ensues under Section 13A(2) or affect the jurisdiction, statutorily conferred upon the Competent Authority of ordering the eviction of a licensee whose entitlement to occupy the premises has come to an end upon the expiry of the licence. The provisions of Section 13A(2) have effect, notwithstanding anything contained in the Rent Act. A licensee cannot claim an immunity from the obligation cast upon him by Section 13A(2) to vacate the premises upon the expiry of the licence by the institution of a Declaratory Suit in the Small Causes Court. Nor can he claim an immunity from the jurisdiction of the competent authority to order him to vacate when he fails to do so upon the expiry of the licence. Section 13A(2) frowns upon such subterfuge and it is the plain duty and obligation of the Court to give effect to the legislative mandate.”

14. It is thus clear that a licensee cannot claim an immunity from the obligation cast upon him to vacate the premises upon the expiry of the license by raising other issues.

15. In a case of *Amit B. Dalal Vs. Rajesh K. Doctor*, 2010(7) *Mh.L.J.*, 1, this Court (Coram : A.S.Oka, J.) in terms of the provisions of Section 24 of the Act of 1999 observed that clause (b) of explanation to Section 24 will apply to the leave and licence agreement and it will not be open for the licensee to lead any evidence contrary to the terms and conditions provided in the said agreement. So far as the issue of the registration of leave and licence agreement in terms of the provisions of Section 55 of the Act of 1999, this Court has observed that Sub Section 2 of Section 55 cannot be read in isolation and it will have to be read with Sub Section (1). It is further observed that Sub Section (1) of Section 55 makes registration of an agreement of tenancy as well as an agreement of leave and licence compulsory. Sub Section (2) cannot be so interpreted that it will nullify clause (b) of explanation to Section 24. Both the provisions will have to be harmoniously construed. It is further observed that a special

remedy for eviction of the licensees under Section 24 of the Act of 1999 is available only to premises given on licence for residential use. Section 55 is applicable not only to licence which is covered by Section 24 but also to the licence granted in respect of the premises for a use other than residential. This Court has also observed that an agreement of leave and licence does not require registration under the Registration Act 1908. This Court held that non-registration of a document required to be registered under Section 55 of the Act of 1999 attracts limited consequences provided under Sub Section (2) thereof apart from prosecution under Sub Section (3). It is therefore, held that notwithstanding the non-registration of an agreement in writing of leave and licence in respect of the premises given for residential use, when an application under Section 24 is made, the clause (b) will apply to such agreement and it will not be open for the licensee to lead any evidence contrary to the terms and conditions provided in the said agreement. It is not open to read the word “registered” in clause (b) of explanation to Section 24. In view of this, the orders passed by the authorities below are not sustainable in the eyes of law. The petitioner is also entitled for the relief in terms of Sub

Section (2) of Section 24, if the licensee has not delivered the possession to the licensor on the 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 licence fees or charge on the premises fixed under the agreement of license.

16. In view of the above, I proceed to pass the following order :

ORDER

- (i) The Writ Petition is hereby allowed in terms of prayer clauses 'A' and 'B'.
- (ii) Writ Petition is accordingly disposed off.
- (iii) Rule made absolute in the above terms.

(V. K. JADHAV, J.)

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