

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.3578/2020

Ms. Deepali D/o Vinod Agrawal

...Versus...

Vishal S/o Setwandas Khatri and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Shri M.R. Johrapurkar, Advocate for petitioner
Shri R.K. Bachwani, Advocate for respondents

CORAM : AVINASH G. GHAROTE, J.

DATE : 02/09/2021

1. Heard learned Counsel for the parties.
2. The order passed below Exh.22, dated 20/02/2020, by the 2nd Additional Judge, Small Causes Court, Nagpur on an application under Order 15-A of the Code of Civil Procedure for directing the defendant to deposit the occupation charges, whereby the learned Court while partly allowing the application, has directed the respondents to pay an amount of Rs.1,00,000/- towards arrears of license fee from May, 2019 to February, 2020 @ Rs.10,000/- per month within 45 days and continue to make payment of the license fee @ Rs.10,000/- per month

from March, 2020 onwards on or before 15th day of every month till the suit is decided, is being challenged.

3. Shri Joharapurkar, learned Counsel for the petitioner submits that the order is unsustainable as Clause -8 of the leave and license agreement provides that in case the license is not continued, the licensee shall pay damages @ Rs.2,000/- per day as well as the monthly license fees, till the date of delivery of possession. He, therefore, submits that the learned Court ought to have granted the occupation charges in terms of what was provided in Clause-8 of the agreement of leave and license dated 02/03/2016. He, therefore, submits that the impugned order is liable to be set aside and the application granted in terms of Clause-8 of the agreement of leave and license.

4. Learned Counsel for the respondents points out that while creating the leave and license an amount of Rs.20,00,000/- was given as a refundable security deposit. This amount at the instructions of the petitioner was given to her father by virtue of four cheques of Rs.5,00,000/- each, the receipt of which is not disputed. It is also not disputed that the said cheques have been encashed and the sum of Rs.20,00,000/- is with the father of the petitioner, at the behest and directions of the petitioner. The agreement further records that the said sum shall be refunded by the

father of the licensor/petitioner at the time of expiration of the leave and license agreement. The period of the license was from 01/03/2016 to 28/02/2019. Learned Counsel submits that before the expiry of the period of license by a notice dated 28/2/2018, the respondents expressed their intention of vacating the premises, upon the expiry of the license and called upon the petitioner as well as her father to clarify the situation by a reply within seven days from the date of receipt of the notice whether the amount of security deposit of Rs.20,00,000/- would be refunded to the respondents at the time of expiration of term of license. To this, a reply was given by the petitioner on 08/03/2018, which is absolutely silent upon this aspect, however, the same seeks delivery of vacant possession within 15 days of the receipt of the said reply. It is, in these circumstances, that the period of leave and license agreement having expired, a suit for eviction came to be filed bearing Regular Civil Suit No.154/2018 before the Small Causes Court, Nagpur. The father of the petitioner, has been added as a party defendant no.3 to this suit and the petitioner by averments made in para 11-A of the plaint shockingly shrugged off her responsibility to refund the security deposit of Rs.20,000,000/- by contending that it was for the defendant no.3/her father to do so, as per the terms of the agreement.

5. It is in this background that the application under Order 15-A of the Code of Civil Procedure filed by the petitioner has to be considered. When the respondents by the notice dated 28/2/2018 had expressed the intention to vacate the suit property, upon receipt of the refundable security deposit, it was for the petitioner to have agreed to refund the sum or to have assured that the refund was so made. The petitioner instead of doing so, chose to hide behind the statement in the document of leave and license, contending that the responsibility to refund the security deposit was that of her father/defendant no.3.

6. Whatever the dispute *inter se* there may be between the plaintiff and defendant no.3 that would not absolve the plaintiff, from ensuring the refund of the security deposit of Rs.20,00,000/- at the time of vacation of the suit property by the respondents. The document of leave and license clearly indicates that the payment of the refundable security deposit was made over to the father of the petitioner, only at the instance and the instructions of the petitioner. Merely because the amount has been paid over to the father of the petitioner, that does not change the nature or purpose for which the amount was given, namely as a refundable security deposit. That apart, it is material to note that the father of the petitioner, i.e. defendant no.3 is not a party to the agreement of leave and license dated 02/03/2016 and

therefore, there is no contract between the respondents/ licensees and the defendant no.3 of any nature whatsoever. Thus, the responsibility of refunding the refundable security deposit squarely rests with the petitioner, who cannot be permitted to wriggle out of the responsibility, by hiding behind the statement, contained in the agreement of leave and license attributing the responsibility of the refund of the sum to her father, who was not a party to the agreement at all. This conduct on the part of the petitioner, clearly indicates the unscrupulousness of her claim made before the learned Judge Small Causes Court in the matter of invoking the provisions of Order 15-A of the Code of Civil Procedure. It is trite that when the licensor before the expiry of the term of the license was willing to vacate the property, upon receipt of the refundable security deposit, but due to its refusal, is being forced to continue with the possession, cannot be saddled with any penal consequences.

7. In the first half, when the matter was being heard, in view of the willingness expressed by Shri Bachwani, learned Counsel for the respondents that they were willing to vacate the premises by placing the key thereof before the Trial Court, who upon deposit of the amount of Rs.20,00,000/- by the petitioner in the Trial Court, could receive the keys, I had made a pertinent query to the learned Counsel for the petitioner as to whether the petitioner would

be willing to deposit the sum of Rs.20,00,000/- in the Court, to which the learned Counsel for the respondents had expressed his willingness. However, Shri Joharapurkar, learned Counsel for the petitioner sought time to take instructions in this regard, due to which, the matter was kept in the second half. In the second half, the learned Counsel Shri Joharapurkar stated that his client is not willing to deposit sum of Rs.20,00,000/- before the Small Causes Court. This indicates the attitude of the licensor/petitioner, to have the possession without refunding the amount given as security deposit. Such an action and attitude cannot be countenanced in law. The order, therefore, passed by the learned Court below, is clearly justified for the reasons as recorded above, as Clause -8 in the agreement of leave and license cannot be enforced, in view of what has been said above. I, therefore, do not find any merit in the writ petition. It is accordingly dismissed. No order as to costs.

(AVINASH G. GHAROTE, J.)