

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

**WRIT PETITION NO. 7771 OF 2021
WITH
INTERIM APPLICATION NO. 2700 OF 2022
IN
WRIT PETITION NO. 7771 OF 2021**

Usha Ramesh Thakre (since deceased)
Through Lrs. ... Petitioners
Versus
The State Of Maharashtra & Ors ... Respondents

Mr. Priyal G. Sarda i/b. Adv. Laxmi Bhanushali for the petitioners
Mr. Chandrakant P. Deogirikar for the respondents
Mrs. V. S. Nimbalkar, AGP for the Respondent Nos. 1 to 3

CORAM : NITIN W. SAMBRE, J.

DATED : 24th AUGUST, 2022

P.C.:

1. This petition is by the alleged licensees questioning the legality and validity of the impugned order dated 24/03/2021 so also the impugned order dated 24/02/2020 passed in exercise of powers under Sections 24 and 44 of the Maharashtra Rent Control Act, 1999 (for short "the said Act").
2. The facts necessary for deciding the present petition are as under.
3. The claim of the petitioners is, non-applicants/owners have executed a tenancy agreement in favour of their mother-Usha

Thakre. The respondents claim that leave and license agreement was entered into on 21/07/1995 for a period of 11 months which subsequently renewed on 11/06/1996. After the expiry of aforesaid leave and license agreement, the petitioners claiming to be the legal heirs of licensee illegally continued in possession. Claiming that under leave and license agreement the legal heirs cannot inherit the license, proceedings were initiated under section 24 of the Maharashtra Rent Control Act, 1999.

4. The respondents-landlords initiated proceedings under old Rent Act which led to filing of Revision Application being CRA No. 256 of 2002 against the order adverse to their interest. Such revision after contest was disposed of by this Court vide order dated 25/10/2002. The said order reads thus:

“1. Heard Shri Devgirikar for the appellant and Shri Bajpal for the respondent no.1.

2. The learned counsel for the respondent no.1 raised a preliminary objection that the original proceedings itself were not maintainable in as much as the suit property originally belong to Dominic D’Souza who had died leaving behind & will and the proceedings were filed without obtaining probate to the will. He submitted that the petition for grant of a probate of the will is still pending in this High Court on the Original Side. He therefore, submitted that there was technical defect in the institution of the proceedings itself and the proceedings were not maintainable. In view of this preliminary objection the

learned counsel for the revision applicant sought leave to withdraw the original proceedings under sub-rule (3) of rule 1 of order XXIII of the Code of Civil Procedure with liberty to file fresh proceedings. I find merit in the submission.

3. Accordingly, original application no.34/98 filed by the applicant is allowed to be withdrawn with liberty to file fresh proceedings.”

5. As non-applicants/landlords were granted permission to initiate fresh proceeding after obtaining probate, fresh proceedings were taken out vide Eviction Application No. 18 of 2013 u/s. 24 the said Act. In the said proceedings after the petitioners were put to notice, the claims were contested on merits. In the Writ Petition preferred by the respondents/landlords being Writ Petition No. 1444 of 2017 on 19/08/2019 this Court passed an order of remand, which reads thus:

" After the matter is heard at some length, it is agreed between learned Counsel for the parties that the impugned order of the Additional Commissioner, Konkan Division in Civil Revision Application No.487 of 2013 as well as the order of the Competent Authority in Original Application No.18 of 2013 passed under Section 24 of the Maharashtra Rent Control Act may be set side and the original application be remanded to the Competent Authority, Konkan Division, Bandra, Mumbai for a fresh hearing in accordance with law. It is ordered accordingly. The Appellant herein, being a legal heir of the deceased original Applicant, shall be entitled to raise such additional grounds in support of his claim application under Section 24 of the Act, as may be permissible in law. The Respondents (original Respondents to the application) shall be permitted to file their reply to the

additional grounds. The original application shall be heard by the Competent Authority on merits after considering the pleadings of the parties and evidence, if any, produced by them. It is made clear that the Respondents' defence or application for leave to defend shall be considered by the Competent Authority only on the condition of their payment of Rs.3000/- per month from today onwards to the Applicant. The Competent Authority shall also consider the effect of the Respondents not having complied with the interim order of payment of compensation passed by this court on 1 October 2015. It is made clear that whilst considering the original application in the light of the Respondents' defence to it, the Competent Authority must apply the special procedure for disposal of applications provided for in Section 43 of the Maharashtra Rent Control Act.

2. The writ petition is disposed of in the above terms."

6. After the aforesaid order of remand, Petitioners have taken out proceedings claiming to be u/s. 43 of the said Act seeking grant of leave to defend. Such proceedings were based on the claim of the petitioners that the leave and license agreement is sham and bogus document. The prayer of the petitioners for grant of leave to defend came to be rejected and the proceedings taken out by the respondents/licensors were decided against the petitioners on 24/02/2020.

7. The petitioners feeling aggrieved preferred an appeal u/s. 44 of the Act. The said appeal came to be dismissed on 24/03/2021 by the Additional Commissioner Kokan Division, Kokan. As such,

this writ petition.

8. Mr. Sarda, learned counsel appearing for the petitioners/tenants would urge that both the orders impugned are not sustainable in law as the same goes contrary to the very scheme of the Act. He would urge that there is enough material with the petitioners to be brought to the notice of the Competent Authority in the matter of exercise of powers u/s. 24 of the said Act. In this background prayer for grant of leave to defend was illegally rejected by the Competent Authority by ignoring the law laid down by this Court in the Matter of *Vijay S. Machindar VS Puneet Jitendra Sejpal and others* reported in 2018 1 AIR (Bom)(R) 426. He would draw support from the observations made in paragraph 12 of the said judgment, which reads thus:

"12. At the stage of deciding whether leave to contest in terms of Section 43(4)(b) of the MRC Act is required to be granted or not, the competent authority, is required to consider whether the affidavit filed by the respondents discloses such facts has not disentitled the landlord from obtaining any order for recovery of possession of the premises on the grounds specified in Section 22 or 23 or 24. This means that, at this stage, the competent authority is required to apply its mind to determine whether the respondents have raised arguable issues in the affidavit filed by the respondents seeking leave to contest the application under Section 24 of the MRC Act. At this stage, the competent authority is neither required nor

expected to adjudicate upon the merits of the claim of the applicant or the merits of the defence raised by the respondents. At this stage, the competent authority is required to examine whether the defence raised by the respondents is an arguable and plausible defence, or whether the defence is totally frivolous and in the nature of a moonshine. At this stage, the competent authority is required to also examine whether the defence raised, is at all a defence which can be gone into by the competent authority in the summary proceedings under Section 24 of the MRC Act or whether, the defence raised is quite alien to the scope of the said provision. As long as affidavit filed by the respondents discloses such facts as would disentitle the landlord from obtaining an order for recovery of possession of the premises on the grounds specified in Section 24 of the MRC Act, leave to contest is required to be granted. However, one thing is clear that the competent authority, at the stage of deciding whether leave to contest should be granted or not, is not entitled to delve into or adjudicate upon the merits or demerits of the defence or to proceed to decide upon the merits and demerits of the respective cases put forth by the rival parties. In this case, this is what competent authority appears to have done and to that extent, the order of the competent authority does appear to be in excess of jurisdiction vested in it."

9. According to him, the material which was placed on record so as to seek leave to defend was in the nature of the proceedings which were *inter se* initiated/decided/pending between the parties. He would then urge that the plea of the leave and license agreement being sham and bogus, the existence of the tenancy

agreement was also pleaded. As such, according to him the said facts ought to have been permitted to be brought by the licensors on the record of the Competent Authority, through affidavit. That being so the authority committed an error in rejecting the prayer for grant of leave to defend. His contentions are the order of rejection of prayer for grant of leave to defend under section 43 sub-section (4) clause (B) is contrary to the very scheme of the said provisions.

10. The next contention of Mr. Sarda is once a plea in defense was brought to the notice of the authority about denial of leave and license agreement, the authorities below committed error in recording finding that there exists leave and license agreement and that being so, the orders impugned are not sustainable. He would further urge that the alleged leave and license agreement is not registered and in such an eventuality leave and license agreement has no evidentiary value. In the wake of above, the agreement ought not to have been considered and accepted by the authority for passing the order of impugned.

11. Mr. Sarda, would further urge that the leave and license agreement ought not to have been considered as a conclusive proof of existence of such a relationship. According to him, the

petitioner continued in possession of the suit premises in the capacity of tenant being legal heirs of original tenant - Usha Thakre and that being so, the orders impugned are not sustainable. Apart from above, he invited attention of this Court to the certain findings recorded in earlier round of litigation which according to him, fortifies the claim of the petitioners that there exist a tenancy agreement and not leave and license agreement.

12. While countering the aforesaid submissions the counsel for the respondent No.4 (a) Mr. Deogirikar would urge that the law on the issue of the existence and acceptance of leave and license agreement is well settled. According to him, the authority under the Rent Act cannot traveled beyond the scope of section 24 of the Act. By inviting attention of this Court to provisions of sub-section 3 of Section 24 of the Act, he would urge that the leave and license agreement is conclusive proof of existence of such relationship and fact. As such, the authority u/s. 24 so also section 44 was justified in granting the relief by passing orders impugned, which is in tune with the said provisions.

13. So as to substantiate his contentions he has drawn support from the judgment of this Court in the matter of *SAILS India V/s Rita M. Rupani* reported in 1997 (2) *Mh.L.J.* 269. His further

contentions are the leave and license agreement was admittedly entered into before 1999 Act came into existence. At the relevant time there was no mandatory provisions to register the leave and license agreement. That being so, the leave and license agreement has to be accepted as it is and not to be the detriment of the interest of the respondents. So as to substantiate his claim, he has drawn support from the judgment of this Court in the matter of *Raj P. Kondur vs Arif T. Khan* reported in 2005(4) Bom. C.R. 383.

14. He would further claim that if the petitioners are coming out with the defense of existence of a forged/bogus/sham leave and license agreement the remedy lies elsewhere of filing a suit seeking such declaration. He would further urge that the petitioners in fact have initiated RAD Suit No.770 of 1998 for declaration of tenancy. However, such suit was dismissed for want of prosecution as the counsel was absent by the order of the Small Causes Court at Bombay on 02/07/2005.

15. The Counsel for the petitioners has disputed the aforesaid factual position.

16. I have appreciated the aforesaid submissions.

17. The fact remains that, this is a 3rd round of litigation in which

respondents/ licensors prayer for the eviction of the petitioners who happens to be the legal heirs of original licensee. I have perused the recitals in the deed of license of 11/06/1996. The said document is *inter se* between the respondent-land owner and Ms. Usha Thakre. The fact remains that the petitioners are the legal heirs of Usha Thakre and claiming tenancy right over the suit property by virtue of the provisions of sub-section 15 of Section 7 of the said Act as it is the contentions of Mr. Sarda that they are residing in the suit premises in the capacity of legal heirs of Usha Thakre. The fact remains that the petitioners has failed to bring on record any documentary evidence so as to demonstrate such claim that they are tenants in the suit premises. The petitioners have even failed to approach before the Civil Court seeking a declaration that either they are tenant in the suit property or the leave and license agreement is sham and bogus document.

18. If we appreciate the position of law as contemplated under sub-section 3 of Section 24 of the said Act which is *pari materia* with the provisions of Section 13A2(3)(b) the of Bombay Rents, Hotel and Lodging House Rates Control Act. Explanation (b) to section 24 provides that the agreement of license in writing shall be conclusive evidence of the fact stated therein.

19. As such, it was for the petitioner to prove to the contrary, that there exists agreement of tenancy which the petitioners could have done in an independent proceedings and not in the present proceedings. The petitioners such plea cannot be appreciated in the proceedings under Section 24 based on the plain interpretation of provisions of Section 24.

20. Mr. Deogirikar was justified in relying on the judgment of this Court in the matter of *SAILS India (cited supra)*. Paragraph nos. 9 and 10 of the judgment reads thus:

"9. Section 13A2 of the Bombay Rent Control Act reads thus:-

13A2. Landlord entitled to recover possession of premises given on licence on expiry of license - (1) Notwithstanding anything contained in this Act, a licensee in possession on occupation of premises given to him on licensee 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" 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."

"Fact" under the Evidence Act means and includes:-

"(1) any thing, state of things, or relation of things, capable of being perceived by the senses;

(2) any mental condition of which any person is conscious."

"Evidence" under Section 3 of the Evidence Act means and includes:-

(1) all statement which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry;

such statements are called oral evidence;

(2) all documents produced for the inspection of the Court;

such documents are called documentary evidence."

According to Section 4 of the Evidence Act, "Conclusive proof" has been defined as:-

"When one fact is declared by this Act to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it."

A close scrutiny of the definition of "fact", "evidence" and "conclusive proof" occurring in Indian Evidence Act would show that the said expressions and words have been defined for the purposes whenever such words and expressions are used in the Indian Evidence Act. [Explanation in Section 13A2 provides a special rule of evidence for the purposes of Section 13A2 and that special rule of evidence prevails for the purposes of the proceedings under Section 13A2 of the Bombay Rent Control Act.] Explanation (b) occurring in Section 13A2(2) which provides that for the purposes of this section an agreement of licence in writing shall be conclusive evidence of the fact stated therein is unambiguous in its term and makes it clear that an agreement of licence in writing proves conclusively all the facts stated therein. When an agreement of licence which is in writing is made conclusive evidence of the facts stated therein, obviously the Legislature has not intended to permit any other evidence to be led by the parties to disprove the facts stated in written agreement of licence. There is no merit in the contention of the learned counsel for the petitioner that since the Legislature has not deliberately used the expression "conclusive proof" in explanation (b) and has used the expression "conclusive evidence of the fact stated therein", the said agreement of licence which is in writing, cannot be said to conclusive proof of the facts stated therein. The distinction drawn by the learned counsel for the petitioner in fact is no distinction in eye of law and the expression used by the Legislature that an agreement of licence in writing shall be conclusive evidence of fact stated therein indicates that the Legislature by providing the special mode of evidence has not permitted any party to disprove the fact stated in an agreement of licence which is in writing.

10. In *Automatic Electric Ltd., Wadala, Bombay v. Sharadchandra Vinayak Tipnis* (cited supra), the learned single Judge of this Court while referring to explanation (b) to Section 13A2 observed that the phrase used is conclusive evidence of the fact stated therein and in view of this explanation it is not possible to go behind it and spell out

some other agreement. The same view is expressed in Amarjit Singh v. R.N. Gupta's case (cited supra) wherein it is observed that a special rule of evidence is prescribed in Section 13A2 which provides that an agreement of licence shall be conclusive proof of facts stated therein and in view of this special rule of evidence the Court cannot go beyond the document. It is true that in none of the aforesaid decisions the Court has considered the expression "conclusive evidence of the fact stated therein" in contradistinction to the expression "conclusive proof" as argued by the learned counsel for the petitioner but in my view the argument is superfluous and the difference is no difference. The expression "conclusive evidence of the fact stated therein " only means that no other evidence can be allowed to be given for the purposes of disproving the facts stated in the leave and licence agreement which is in writing. In other words under Section 13-A2(3)(b) an agreement of licence in writing is conclusive proof of the facts stated therein. The first contention raised by the learned counsel for the petitioner has, therefore, no merit and is accordingly negated."

21. The plain reading of section 24 of the Maharashtra Rent Control Act particularly explanation (b) provides for agreement of license in writing to be conclusive evidence of the facts stated therein. The aforesaid provision is unambiguous and abundantly makes it clear that the recital in agreement of license is to be conclusively accepted in the proceedings like present one. Once such agreement of license is made conclusive evidence of the recitals/terms mentioned therein, the only evidence which can be inferred by the Court irrespective of the contentions of the parties,

is to accept the same. As such from the bear perusal of the license agreement referred above, it is apparent that the premises in question was given on license to the mother of the petitioners on leave and license basis.

22. In the aforesaid background, both the authorities below were justified in not only rejecting the prayer of the petitioners for grant of leave to defend but also in the matter of rejecting the prayer of the petitioners on maintainability of the proceeding initiated under Section 24 of the Act.

23. Apart from above, about leave and license agreement, it is pleaded by respondents/applicants before the Competent Authority that same was executed in 1995/1996 i.e before the Act of 1999 came into existence. The fact remains that, the earlier Rent Act has not made mandatory to have the leave and license agreement to be a registered document. It is post 1999 Act, a provision is brought into existence which has made it mandatory to have leave and license agreement a registered.

24. In the aforesaid background, the claim put forth by Mr. Sarda, that the proceedings under Section 24 are granted based on unregistered leave and license agreement cannot be accepted. In support of the aforesaid findings this court can rely on the

judgment of this Court in the matter of *Raj Prasanna Kondur (cited supra)*. The Leave and license agreement relating to a particular premises entered between the licensor and licensee on or after 10/03/2000 is mandatorily required to be in writing and also registered under the provisions of the Registration Act, 1908. This Court is sensitive to the fact that there was a written leave and license agreement between the respondents-landlords and deceased mother of petitioners. Even if such leave and license agreement is unregistered, still the same is covered under explanation (b) of section 24 of the Act in relation to the conditions stated in such written agreement. The paragraph nos. 15, 16 & 17 of the judgment in the matter of *Raj Prasanna Kondur (cited supra)* reads thus:

"15. The contention of the learned Advocate for the petitioner that the absence of registered written agreement would render the license to be invalid and therefore, it would result in the absence of jurisdictional fact to enable the competent authority to entertain the application under Section 24 of the said Act, cannot be accepted. The 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 license 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.

Absence of registration or even the agreement being not in writing, that would not render the license to be invalid. Undoubtedly, expiry of licence presupposes existence of licence prior to its expiry. However, the existence of licence does not depend upon its record in writing or registration thereof. It depends upon the availability of permission by the landlord to another person to use the landlord's premises for consideration and moment those factors are established, the person using the premises would be the licensee within the meaning of the said expression under the said Act. Obviously, the written record in relation to the agreement of licence would be the conclusive proof about the terms of licence and in case of registration of such agreement would help the landlord to avoid the consequences stipulated under Section 55(2) and (3) of the said Act. This is apparent from the definition of the term "Licensee" under Section 7(5) of the said Act which nowhere requires the license granted to occupy the premises for license fee or charge to be necessarily in writing or the agreement to have been registered. If the contention of the learned advocate for the petitioner is accepted, the provisions of sub-section (2) of Section 55 of the said Act as well as the Clause (b) to the explanation of Section 24 would be rendered otiose. No provision of law can be interpreted to nullify the effect thereof or to render the provision to be nugatory.

16. Undoubtedly, as submitted by the learned advocate for the petitioner, the Item No.6 of the Concurrent List of the Seventh Schedule of the Constitution of India deals with the subject of transfer of property other than the agricultural lands, registration deeds and documents. Apparently, the subject of registration of the documents falls in the Concurrent List, and the State as well as the Central Government are empowered to enact the statutes in respect of the said subject. However, merely referring to the said item in the concurrent list, it is difficult to accept the contention on behalf of the petitioner that

though the Section 17 of the Registration Act, 1908 does not enumerate the agreement for leave and license being one of the documents which is compulsorily required to be registered, by virtue of the provisions comprised under Section 55(1) of the said Act, the said document would stand included in or appended to the list of documents provided under Section 17 of the Registration Act, 1908. The contention that the provisions regarding compulsory requirement of registration of the leave and license agreement found in Section 55(1) of the said Act will have to be read along with the list of compulsorily registerable documents under Section 17 of the Registration Act, 1908 cannot be accepted. In fact, while providing for the consequences of failure on the part of the landlord to get such agreement registered, the provisions of law in the said Act nowhere exclude unregistered agreement of leave and license to be inadmissible in evidence. On the contrary, the said agreement has been made specifically admissible under clause (b) of the Explanation to Section 24 of the said Act which is not in consonance with the provision of law comprised under Section 49 of the Registration Act, 1908. If it was the intention of the legislature that the provision regarding the requirement of registration of the leave and license agreement has to be read along with Section 17 of the Registration Act, 1908, nothing would have prevented the legislature to introduce amendment to Section 17 itself or at least to make such agreement inadmissible in the evidence rather than specifically providing for admissibility of such document in evidence as being a conclusive proof of the facts stated therein irrespective of the fact that the agreement is not registered. This fact clearly reveals that the provisions comprised under Section 55(1) of the said 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.

17. It is also argued that the procedure provided under Section 24 are of summary nature. There is no appeal provided against the order to be passed in such proceedings. The orders passed by the competent authority under Section 24 are not appealable in view of the provisions in that regard under Section 44(1). However, they are revisable under sub-section (2) of Section 44 provided that the application in that regard has to be presented within 90 days of the date of order sought to be revised. The jurisdiction of the civil court to deal with such matters is barred under Section 47. Any order passed under Section 24 in favour of the landlord would result in dispossession of the person in occupation of the premises. Being so, the provisions are to be liberally construed bearing in mind the drastic effect thereof. The contention is devoid of substance. The competent authority created under the said Act to order eviction of the licensee on the expiry of the period of license in terms of Section 24 does not speak of eviction of a person in occupation of the premises otherwise than as the licensee and whose license has expired or terminated. Mere absence of appeal remedy is of no consequences. The appellate remedy is a statutory remedy. There is no inherent right in a litigant to prefer appeal against the order of every Court or quasi-judicial authority of original jurisdiction. Besides, under the guise of interpretation, it does not permit interpolation or addition or substitution of the words in or to or from the statutory provision. If the contention of the petitioner is accepted, one will have to read the expression "written and registered" in Section 24 in relation to the agreement of license, which will virtually amount to violence to the said statutory provision. Besides, the law on the point as laid down by the Apex Court in Prakash Jain's case (supra) Prakash Jain's case (supra) Prakash Jain's case (supra) does not prevent any such interpretation to the provisions of law comprised under the said Act."

25. Apart from above, during the course of hearing, the counsel for respondent has invited my attention to the order dated 02/07/2005 passed in RAD No.770 of 1998 by the Small Causes Court at Bombay. The said order reads thus:

“The parties and their Advocates are absent. The suit is therefore dismissed for default.”

26. It is claimed by the counsel for the respondents that the aforesaid suit was initiated by the mother of the petitioners' seeking declaration that she has tenancy right over the suit property. The fact remains that such suit was dismissed in default on 02/07/2005. Subsequently to above neither the petitioner nor their mother has taken out proceedings either for restoration or seeking fresh declaration in their favour about tenancy rights as could have been done under the provisions of Specific Relief Act.

27. Apart from above, this Court is also sensitive to the position of law that in case of existence of leave and license agreement, the legal heirs of licensee cannot claim succession in interest and their status is that of the trespasser.

28. In the aforesaid background, I hardly see any illegality in the order impugned, which warrants interference. The petition as such fails and stands dismissed.

29. As a sequel of the pending application also stands dismissed.

30. The prayer of Mr. Sarda for continuation of interim relief order passed by this Court for a period of 12 weeks, though resisted, however, having regard to the long-standing possession of the petitioners over the suit property, the same is extended by twelve weeks, as prayed.

(NITIN W. SAMBRE, J.)