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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1152 OF 2022**

Mr. Mahendra Rajmal Kothari Petitioner.

V/s

Mr. Kapil Dharmchand Jain
and Ors. Respondents.

Ms. Sapna S. Krishnappa for the Petitioner.
Mr. Sandeep Mishra for Respondent No.1.
Mr. C. D. Mali, AGP for Respondent Nos. 2 and 3.

CORAM: NITIN W. SAMBRE, J.

DATE: JULY 20, 2022

P.C.:-

1] These proceedings are arising out of the provisions of Section 24 and 44 of the Maharashtra Rent Control Act (Hereinafter referred to for the said of brevity as “the Act”)

2] Challenge in the Petition is to the order dated 19/1/2022 passed in Revision Application No.435 of 2021, so also to the order dated 20/12/2019 passed in Eviction Application No.104 of 2019 pursuant to the provisions of Section 24 of the Act.

- 3] Facts necessary for deciding the Petition are as under:-
- 4] Petitioner herein claimed to have purchased suit property from one Narang on or about 17/11/2011.
- 5] Petitioner, thereafter, claimed to have mortgaged the said property with Investment Firm of Respondent No.1 vide mortgage deed dated 5/3/2013, a registered document.
- 6] On 11/2/2016, Petitioner and his wife claimed to have entered into registered agreement of sale with Respondent No.1 in relation to very same property.
- 7] It appears that the Petitioner and Respondent No.1 entered into Leave and License Agreement wherein the Petitioner is shown to be licensee, as it is claimed that title stood vested in Respondent No.1 by virtue of Agreement of Sale dated 11/2/2016.
- 8] In this backdrop, Respondent No.1 initiated eviction proceedings under Section 24 based on the aforesaid License Deed.

9] In the said eviction proceedings, Petitioner took out Application for leave to defend which was time barred and as such condonation of delay was sought which is rejected vide order dated 20/12/2019 passed by Respondent No.2

10] As a sequel of above, eviction proceedings were decided in favour of the Respondent No.1, directing eviction of the present Petitioner vide order dated 20/12/2019.

11] Petitioner feeling aggrieved preferred an Appeal which also came to be dismissed on 19/1/2022. As such, this Petition.

12] It is brought to my notice by the learned Counsel for Respondent No.1 that order dated 17/3/2022 passed by this Court is not complied with whereby present Petitioner was directed to deposit entire arrears as was directed vide order of the competent authority passed under Section 24 of the Act on 20/12/2019. Petitioner since has failed to comply with the said order, this Court called upon the Counsel for the Petitioner to respond to the same. Counsel for the

Petitioner informs that the order is not complied with and this Court may pass appropriate orders in the matter.

13] Apart from above, my attention is invited by Counsel for the Petitioner to the suit preferred by the Petitioner being Special Civil Suit No.207 of 2019. In the said suit declaration is sought that Agreement of Sale dated 11/2/2016 is illegal and that Respondent No.1 has no right, title and interest to the suit property and as such cannot dispossess or interfere with the possession of the Petitioner. In the said suit injunction is also sought not to interfere with the possession of the petitioner. In the said suit, direction is also sought against Respondent No.1 to execute registered deed of cancellation of Agreement of Sale dated 11/2/2016 and to restore Mutation Entry in favour of the Petitioner. According to her, in the wake of the pleadings in the plaint, authorities below ought not to have entertained the proceedings for eviction under Section 24.

14] Counsel for Respondent No.1 however would urge that in the said Special Civil Suit, there is no temporary injunction in operation against Respondent No.1. Apart from above, he would claim that

Petitioner was not granted leave to defend and considering Leave and License Agreement, both the Courts were justified in passing the orders impugned.

15] I have considered submissions.

16] Facts remains that order of this Court dated 17/3/2022 whereby Petitioner was directed to deposit an amount of arrears is not complied with.

17] Apart from above Leave and License Agreement dated 9/1/2018 categorically speaks of the tenure for which license was granted and after expiry of license period, proceedings came to be initiated on the ground that period mentioned in Leave and License Agreement has expired and the Petitioner has not paid license fee.

18] Having regard to the concurrent findings recorded by both the authorities below as regards existence of Leave and License Agreement, expiry of license period and failure on the part of the Petitioner to handover possession after expiry of license period, in my

opinion, both the authorities were justified in recording finding that Petitioner is liable to be evicted from the suit premises.

19] In this backdrop, Petition fails and same stands dismissed.

20] However, it is clarified that suit claim of the Petitioner be decided independent of the findings recorded hereinabove.

(NITIN W. SAMBRE, J.)