



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

WRIT PETITION NO. 1112 OF 2022

Sujata Golha

..Petitioner/s

v/s.

K.S.Madhava (since deceased)
thr. LRS and ors.

..Respondents

Mr. Vivek N. Machha a/w. Adv. Srivani Ega for the Petitioner/s.
Adv. G.S.Vaidya for the Respondent Nos.1a to 1d.
Mr. P.P.Pujari AGP for the Respondent No.2.

**CORAM : ANUJA PRABHUDESSAI, J.
DATED : 3rd OCTOBER, 2023.**

P.C.

1. Heard learned Counsel for the Petitioner and the learned Counsel for the Respondent No.1. The petitioner takes exception to order dated 14.9.2021 passed by the Competent Authority, Rent Control Act, Konkan Division, Mumbai, allowing Eviction Application No.14 of 2007, filed by the respondent under Section 24 of the Maharashtra Rent Control Act, 1999. By the impugned order the Competent Authority directed the petitioners herein to hand over vacant and peaceful possession of flat No. 1786 (404) Building No.50, A Wing, Omkar Co-operative Hsg. Society, Tilak Nagar, Chembur to the Respondent within 30 days from the date of the order.

2. The respondent had initiated eviction proceeding essentially on the ground that the Petitioner was inducted in flat No. 1786 (hereinafter referred to as the suit premises) under agreement of leave and license dated 23.06.2006 for a period of three months. The licensee failed to vacate the premises after expiry of three months, hence notice came to be issued calling upon the petitioner to vacate the suit premises. The petitioner having failed to comply, proceedings under Section 24 of the Act came to be filed.

3. The petitioner denied having executed leave & license agreement dated 23.06.2006 and disputed the genuineness of the said agreement. The petitioner claimed that the respondent no.1 had in fact agreed to sell the suit premises for sale consideration of Rs.12,00,000/-.

4. By order dated 02.02.2017, the Competent Authority held that there was no leave and license agreement between the parties, and hence it had no jurisdiction to entertain the proceeding under Section 24 of the Act. The respondent challenged the said order in Writ Petition No. 3893 of 2018. By order dated 22.01.2019, this Court set aside the order dated 02.12.2017, and remanded the proceeding with direction to the Competent Authority to send the original leave and license agreement along with the admitted signature of the petitioner herein for the opinion of the hand writing expert. The respondent was directed to

file affidavit of evidence before the Competent Authority within two weeks from the date of the order. They were given liberty to adduce evidence before the Competent Authority. All contentions of the parties were kept open and the Competent Authority was directed to dispose of the proceeding within six months from the date of receipt of the copy of the order.

5. Accordingly, both the parties adduced evidence before the Competent Court. The Competent Authority by judgment dated 14.09.2021 allowed the application and directed the petitioner herein to hand over vacant possession in respect of the suit premises to the respondent, within a period of 30 days.

6. A perusal of the impugned order reveals that pursuant to the order dated 22.01.2019 passed by this Court in Writ Petition No. 3893 of 2018, the Competent Authority had forwarded the original leave and license agreement along with the MOU, which contained admitted signature of the petitioner herein, to the hand writing expert for opinion. The impugned order records that the expert opinion was received on 11.02.2020 vide letter No.BHP/63/2020/PCB/18/19/SVV. The Competent Authority has not exhibited the report since the petitioner herein had not examined the expert and has decided the matter without relying upon the report of the handwriting expert. It is stated

that the copy of the report was also not furnished to the parties.

7. It is pertinent to note that the petitioner herein had disputed genuineness of the leave and license agreement dated 23.6.2006. Hence this Court had directed the Competent Authority to seek an opinion of the handwriting expert, which though not conclusive is admissible under Section 45 of the Indian Evidence Act. Hence the Competent Authority was not only required to seek an opinion of the handwriting expert, but it was incumbent upon the Authority to consider the report while deciding the issue. The records indicate that the Competent Authority merely forwarded the leave and license agreement and the admitted signature to the handwriting expert, but did not furnish copy of the report to the parties, did not afford an opportunity to the parties to cross examine the expert witness and did not consider the report while deciding the issue. Suffice to say that mere forwarding of the document to the handwriting expert does not amount to compliance of the order. It is beyond comprehension as to why the Authority has chosen not to comply with the directions of the Court and such approach needs to be deprecated.

8. Under the circumstances, this is a fit case to remand the matter to the Competent Authority with direction to take on record the opinion of the expert witness. The Competent Authority shall furnish copy of the

said report to both the parties. The Competent Authority shall give an opportunity to the parties to cross examine the expert witness if so desired and decide the matter afresh after taking into consideration the opinion of the hand writing expert and other evidence already on record. The entire exercise shall be concluded within a period of three months from the date of receipt of this order.

9. Petition stands disposed of in above terms.

(ANUJA PRABHUDESSAI, J.)