

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

**WRIT PETITION NO. 7741 OF 2022
WITH
INTERIM APPLICATION NO. 13958 OF 2023
IN
WRIT PETITION NO. 7741 OF 2022**

Iqbal Abdul Mansoori

.... Petitioner

v/s.

Mrs. Zenab Ayub Shaikh and anr.

.... Respondents

Mr. Prashant J. Rai a/w. Ms. Pallavi Kulkarni, Ms. Daksha Parmar
and Ms. Poonam Rajbhar i/b. Prajot Jaggi for the Petitioner.
Mr. Amogh Singh a/w. Mr. Santosh Pathak and Mr. Nimish
Lotlikar for the Respondents.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 09th OCTOBER, 2023.

P. C. :-

. The Petitioner herein has challenged the order dated 23/12/2019 whereby the Additional Commissioner, Konkan Division, Bandra rejected the Revision Application filed by the aforesaid Petitioner challenging the order dated 21/09/2019 in Eviction Application No.10/2018 under section 24 of the Maharashtra Rent Control Act, 1999.

2. The dispute is in respect of the residential flat bearing No.17, Society No.85 in Swayambhu Rameshwar Co-operative Housing

Society Limited, Andheri (West), Mumbai. The said premises shall be hereinafter referred to as 'the suit premises'.

3. The Respondent No.1 claims to be the owner of the suit premises. It is the case of the Respondent No.1 that she had entered into a leave and license agreement dated 10/06/2009, whereunder she had let out the suit premises to the Petitioner for a period of 11 months on payment of license fees of Rs.5,000/- per month. Upon expiry of the leave and license agreement, the Respondent No.1 called upon the Petitioner to vacate the suit premises. The Petitioner having failed to vacate the suit premises and further having failed to pay the license fees as agreed upon, the Respondent filed an application under section 24 of the Maharashtra Rent Control Act.

4. The Competent Authority observed that the Respondent No.1 who is the landlord of the premises, had let out the premises to the Petitioner on leave and license basis and that the Petitioner had failed to vacate the premises upon expiry of the period of license. The Competent Authority therefore held that the Respondent No.1 is entitled to recover possession of the premises and further in terms of sub-section 2 of section 24, the Petitioner is liable to pay damages as

double the rate of license fees from 01/06/2010 till handing over possession. Based on these findings, the Competent Authority allowed the application and directed the Petitioner to handover vacant and peaceful possession of the suit premises to the Respondent No.1 and further directed to pay compensation @ Rs.10,000/- per month from 01/06/2010 till handing over of the possession.

5. Being aggrieved by the said order, the Petitioner filed Revision Application under section 44 of the Rent Control act before the Additional Commissioner, Konkan Division. The petitioner contended that he is the owner of the suit premises and that the respondent had fabricated the sale agreement as well as the leave and license agreement. The Revisional Authority dismissed the Revision Application mainly on the ground that the Petitioner had failed to produce any agreement or document to prove that he had purchased the suit premises from the original owner or to show that he had made any payment to the owner in respect of the suit premises. Hence, the contention of the Petitioner that he is the owner of the suit premises was rejected.

6. The Revisional Authority observed that the Respondent No.1 had

purchased the premises and that the share certificate is also transferred in her name and that she had permitted the Petitioner herein to reside in the said premises on leave and license basis as per the leave and license agreement dated 10/06/2009, which was for a period of 11 months commencing from 11/06/2009 and ending on 03/05/2010. The Revisional Authority has observed that the Petitioner has failed to prove that he has any other right in respect of the suit premises and held that the petitioner had committed breach of the terms and conditions of the license and hence, dismissed the revision application. Being aggrieved by these orders, the Petitioner has filed this Petition.

7. Learned counsel for the Petitioner states that the Petitioner is in fact not a licensee but is the owner of the premises. It is submitted that the Petitioner who was in Dubai had allowed the Respondent No.1, who is his step sister to conclude the sale transaction in respect of the suit premises on his behalf. He submits that both the authorities below have erred in holding that the Respondent No.1 is the landlord and the Petitioner was in possession of the premises as a licensee.

8. Per contra, Mr. Amogh Singh, learned counsel for the Respondent submits that the Respondent No.1 herein had entered into an

agreement for sale with Ashok Atmaram Ingale, the original owner of the suit premises and she paid the entire sale consideration and was put in possession of the premises by the original owner. Learned counsel for the Respondent further states that the share certificate in respect of the suit premises was transferred in the name of the Respondent in the year 2003. He submits that the Petitioner was put in possession of the suit premises under leave and license agreement dated 10/06/2009 for a specific period of 11 months and he was liable to vacate the premises on expiry of the license period.

9. Learned counsel for the Respondent No.1 states that it was only after the eviction order that the Petitioner filed the suit before City Civil Court, Mumbai in the year 2020 questioning genuineness of the leave and license agreement. He further submits that till date, the Petitioner has not paid license fees and arrears are of Rs.15,40,000/- as on March, 2023 out of which the Petitioner has paid meager amount of Rs.3,85,000/-. He submits that the Petitioner has no right to continue to occupy the said premises. He has relied upon the decisions of this Hon'ble Court in *Raj Prasanna Kondur v/s. Arif Taker Khan and others* 2004 SCC Online Bom 1055 and *Amit B. Dalal v/s. Rajesh K. Doctor* 2010 (5) AIR Bom R 683.

10. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

11. Section 24(1) of the Maharashtra Rent Control Act which begins with non-obstante clause provides that a licensee in possession or occupation of premises given to him on license for residence shall deliver possession of such premises to the landlord on expiry of the period of license; and on failure of the licensee to so deliver, a landlord shall be entitled to recover possession of such premises from a licensee, on the expiry of a period of license, by making an application to the Competent Authority. Sub-section (2) of Section 24 stipulates that any licensee who does not deliver possession of the premises to the landlord on expiry of the period of license 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 license fee or charge of the premises fixed under the agreement of license. Sub-section (3) of Section 24 provides that the Competent Authority has no jurisdiction to entertain any claim of whatsoever nature from any other person who is not a licensee according to the agreement of license. Clause (b) to the Explanation to Section 24

clearly provides that an agreement of license in writing shall be conclusive evidence of the fact stated therein.

12. In ***Raj Prasanna Kondur v/s. Arif Taher Khan and others 2005(4) Bom.C.R. 383***, the challenge was relating to the registration of the leave and license agreement. While considering the said issue and the scope of Section 24, the learned Single Judge of this Court observed that non-registration of the agreement will not affect the right of the landlord to seek eviction of the licensee on the expiry of the license period nor the delay in presentation the agreement for registration will come in the way of the competent authority in taking cognizance of the application of the landlord on expiry of the licensee to the person in occupation of the premises of the landlord. It is further held that once the factum of expiry of license is established, the competent authority, being satisfied about the same, is left with no alternate than to order the eviction of the person whose licence to occupy the premises has come to an end, and the same is clear from the ruling of the Apex Court in ***Prakash H. Jain v/s. Ms. Marie Fernandes 2004 (2) Bom.C.R. (S.C.) 592***, wherein in view of Section 43(4)(a) of the Act, it was held that "the net result of an application/affidavit with grounds of defence and leave to contest not having been filed within the time as has been

stipulated in the statute itself as a condition precedent for the competent authority to proceed further to enquire into the merits of the defence, the competent authority is obliged, under the constraining influence of the compulsion statutorily cast upon it, to pass orders of eviction in the manner envisaged in Clause (a) of Sub-section (4) of Section 43 of the Act.

13. Similarly, in ***Amit B. Dalal v/s. Rajesh K. Doctor 2010 (5) AIR Bom R 683***, while considering the scope of section 55 and 24 of the Maharashtra Rent Control Act, 1999, the learned Single Judge of this Court (as his Lordship then was) has observed thus :-

“ 19B. The contention of the learned counsel appearing for the Petitioner is that if an agreement of leave and licence is not registered, in view of sub-section 2 of section 55 of the said Act, if the a licensee while opposing an application under section 24 contends that in fact what was created was a tenancy and not a licence, the said contention will prevail unless it is proved otherwise by the applicant-licensee. However, sub-section 2 cannot be read in isolation and it will have to be read with sub-section (1). The sub-section (1) makes registration of an agreement of tenancy as well as an agreement of leave and licence compulsory. That is how in sub-section (2) there is a reference to premises being given on leave and licence or the premises being let out to the tenant. 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 must be noted here that a special remedy for eviction of licensees under section 24 of the said Act 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 premises for a use other than residential. The effect of sub-section (2) of section 55 is that in case of licence granted for non-residential use, if the agreement is not registered, it will be open for the opponent licensee to contend that the terms and conditions of the licence agreed between the parties were different from the terms and conditions incorporated under the agreement of leave and licence. When an application for eviction of a licensee in respect of licence granted for residential use is made under section 24 of the said Act, to the leave and licence agreement subject matter of such application, explanation (b) will apply and the agreement will be treated as conclusive evidence of the facts stated therein. ”

14. In the instant case, it is not in dispute that the Respondent No.1 had entered into an agreement for sale with the original owner of the suit premises. She had paid the entire sale consideration and was put in possession of the suit premises. The share certificate in respect of the suit premises is also transferred in the name of the Respondent No.1. The documents produced by the Respondent No.1 amply prove that she is the owner/landlord of the suit premises. There is no manifest misreading of the evidence and apparent error in arriving at

the finding that the Respondent No.1 is the owner of the suit premises.

15. It is pertinent to note that Section 24 coupled with the provision set out in Chapter VIII of the Maharashtra Rent Control Act enables the landlord to resort to the summary proceedings to evict the licensee who has failed to vacate the premises after the expiry of the period of license. In the instant case, the records reveal that the Petitioner was inducted in the suit premises by virtue of leave and license agreement dated 10/06/2009 for a period of 11 months on payment of license fees of Rs.5,000/- per month. As noted above, Clause (b) to the Explanation to Section 24 clearly stipulates that an agreement of license in writing serves as conclusive evidence of the facts stated therein. Considering the fact that the Respondent had not challenged genuineness of the said agreement till the order of eviction, the respondent cannot be permitted to defeat the very object of the section by raising a spacious plea that the agreement is forged and fabricated. The Respondent, who was inducted in the suit premises as a licensee, failed to deliver possession of the suit premises on expiry of the period of license. Hence, the Competent Authority was within its jurisdiction to entertain the application and pass an order of eviction and to award compensation. Having gone through the material on record, in my

considered view, finding recorded by both the authorities are neither illegal nor perverse. Hence, no case is made out for interfering with the orders in exercise of the powers under Article 227 of the Constitution of India.

16. Under the circumstances and in view of the discussion supra, the Petition is dismissed. Interim Applications, if any, stand disposed of in view of dismissal of the Writ Petition.

17. At this stage, learned counsel for the Petitioner seeks three weeks time to vacate the premises. Three weeks time is granted to vacate the premises. Needless to state that, in the event the Petitioner fails to vacate the premises within three weeks, the Respondent will be at liberty to execute the decree of eviction.

(SMT. ANUJA PRABHUDESSAI, J.)

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