**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**CIVIL WRIT PETITION NO.8286 OF 2022**

Mayuri Dilip Vora ...Petitioner.

V/s.

Competent Authority & Others. ...Respondents.

Mr. Farhan Dubash a/w. Mr. Shanay Shah, Mr. Kalpesh Mehta, Mr. Vasim Shaikh, Ms. Prachi Badani i/b Pravin Mehta and Mithi & Co. for the Petitioner.
Mr. C. D. Mali, AGP for the Respondent-State.
Mr. Rushabh Sheth a/w. Mr. Siddharth Kakka, Mr. Karan Shah i/b Mr. Siddharth Kaleka for Respondent Nos.3 and 4.

**CORAM : SHARMILA U. DESHMUKH, J.**

**DATE : 10th NOVEMBER, 2023.**

**P.C.:-**

1. At the outset, Mr. Sheth, learned counsel appearing for respondent No.3 submits that although *vakalatnama* has been filed on behalf of respondent No.3, he is appearing for respondent Nos.3 and 4 and undertakes to file *vakalatnama* on behalf of Respondent No.4 on or before 29/11/2023.

2. By this petition filed under Article 227 of the Constitution of India, the challenge is to the impugned order dated 18/5/2022 passed by the Appellate Authority setting aside the judgment of the Competent

Authority dated 24/12/2021 on an application filed under Section 24 of the Maharashtra Rent Control Act, 1999.

3. The facts of the case are that Eviction Application No.110 of 2021 was instituted by the present petitioner against the respondent Nos.3 and 4 seeking recovery of the possession of the licensed premises, arrears of license fees till 21/4/2021 and a direction to the respondent Nos. 3 and 4 to pay double the amount of the license fees from 22/4/2021 till handing over the peaceful possession of the premises.

4. The Petitioner is the owner of the residential flat on the entire third floor of the building known as "Anaya", Plot No.31, Vithal Nagar Co-Operative Housing Society Ltd. Off. 10th Road, J. V. P. D. Scheme, Vile Parle (W) 400 049. Leave and license agreement was executed between the petitioner and respondent Nos. 3 and 4 in respect of the licensed premises which was duly registered. The term of the license was for the period from 22/4/2019 to 21/4/2021 upon payment of monthly license fees of Rs.2,80,000/- for the period from 22/4/2019 to 21/4/2020 and enhanced monthly amount of Rs.2,94,000/- for the period from 22/4/2020 to 21/4/2021 with interest free refundable security deposit of Rupees Nine Lakhs only. It is the case of the Petitioner that during the period of the license, the Respondent Nos 3 and 4 defaulted in the payment of monthly

compensation and also defaulted in paying the TDS as required under the statutory provisions. *Vide* communication dated 6/11/2020 and 18/11/2020 the respondent Nos.3 and 4 were called upon by the petitioner to pay the outstanding license fees but did not meet with any satisfactory response. On 17/5/2021, after the expiry of the leave and license agreement notice was issued by the advocate of the petitioner to respondent Nos. 3 and 4 calling upon respondents to pay the outstanding license fees which according to the petitioner was Rs.12,92,510/- for the period from 22/4/2020 till 21/4/2021 and to handover vacant and peaceful possession of the suit premises. Respondent Nos.3 and 4 neither paid the arrears of the license fees nor vacated the suit premises leading to the filing of Eviction Application No.110/2021 before the Competent Authority on 17/6/2021 under the provisions of section 24 of the Maharashtra Rent Control Act, 1999 (for short "Rent Control Act").

5. The Competent Authority by its order dated 24/12/2021 allowed the Application and directed the respondent Nos.3 and 4 to handover the vacant and peaceful possession of the licensed premises within a period of 30 days to the applicant, to pay the arrears of license fees of Rs.12,94,510/- within a period of 30 days and to pay the license fees at double the rate of Rs.2,94,000/- i.e. Rs.5,88,000/- per month from

22/4/2021 till handing over the possession of the licensed premises. As against this, a Revision Application under Section 44 of the Rent Control Act came to be filed before the Revisional Authority. The Revisional Authority by its order dated 18/5/2022 partly allowed the Revision Application and remanded the matter to permit the parties to lead evidence.

6. Heard Mr. Farhan Dubash for the petitioner, Mr. C. D. Mali, AGP for the Respondent-State and Mr. Rushabh Sheth for Respondent Nos.3 and 4.

7. Mr. Farhan Dubash, learned counsel appearing for the petitioner submits that the admitted position is that the registered leave and license agreement entered into between the parties was for the period from 22/4/2019 to 21/4/2021. He submits that during this period, the Respondent Nos 3 and 4 defaulted in payment of license fees from 22/4/2020 till the date of expiry of period of license. He would contend that the order of the Competent Authority is in accordance with the statutory provisions. Drawing attention of this Court to the findings of the Appellate Authority, he submits that the case of respondent Nos. 3 and 4 before the Revisional Authority is that they had purchased a residential flat and were supposed to get possession by February'2021 and as such there was an oral agreement to extend the period for one year upto April, 2022. He would

submit that based on the submission of oral agreement, the matter is remanded by the Revisional Authority without taking into consideration the fact that at the time of passing of the order of remand, the extended period of leave and license, if any, had also expired.

8. *Per contra,* Mr. Sheth, learned counsel appearing for respondent Nos.3 and 4 submits that by an order of 24/12/2021 the leave to defend was rejected by the Competent Authority and the order of eviction was passed. He submits that during the period of subsistence of the leave and license agreement till 2021, the monthly license fees were paid. However the amount of TDS was not included while calculating the arrears of the license fees. He would submit that in the second year due to the Covid it was agreed between the parties that the license fees would not be enhanced to Rs.2,94,000/- but it would be kept at Rs.2,80,000/-. He has tendered a chart and would submit that according to his calculations the net amount payable would be about Rs.87,32,875/-.

9. This submission is countered by Mr. Dubash by pointing out from the chart that the license fees of Rs.87,32,875/-is further reduced by deducting the amount of security deposit, cash paid, purchases alleged to be made, difference of rent and as such the respondent Nos. 3 and 4 have arrived at a figure of Rs.68,99,225/- which as per the chart does not include

the prospective rent of Rs.3,10,000/- till April'2024. He would submit that as such respondent Nos.3 and 4 have unilaterally decided that the occupation of the premises will continue till April 2024 irrespective of any orders that may be passed by any Court of law.

10. Considered the submissions and perused the record.

11. The admitted position is that pursuant to a registered leave and license agreement which was for a period of 2 years from 22/4/2019 to 21/4/2021, the premises of the petitioner was permitted to be occupied by the respondent Nos.3 and 4. It is from this stage that the never ending agony of the petitioner commenced inasmuch as neither the license fees has been paid nor the premises have been vacated by respondent Nos.3 and 4 upon expiry of the leave and license agreement. The conduct of respondent Nos. 3 and 4 can be gauged from the fact that they presume that they will be in occupation of the licensed premises till they decide to vacate which in this case they have decided to vacate in the month of April'2024 without any regard to the plight of the licensor, who is neither able to enjoy her own premises nor is receiving any monthly compensation from the Respondent Nos 3 and 4. All that she has received through out the litigation is assurances to pay on basis of timelines mentioned in bar charts which never fructified.

12. In the application seeking leave to defend, the Respondent Nos 3 and 4 have admitted that the term of the leave and license agreement was for the period from 22/4/2019 to 21/4/2021. It is contended in the application that due to pandemic their alternate premises could not get ready and that the possession would be received in June, 2022 and that the Respondents are ready to execute a fresh leave and license agreement for period of one year. It is contended that through a verbal conversation the husband of the Petitioner agreed to extend the lease period for one year. The Competent Authority by order dated 24/12/2021 rejected the application for leave to defend by considering the provisions of Section 43(4) (b) of Rent Control Act that no facts are disclosed which would dis entitle the licensor to claim recovery of possession of premises. While rejecting the leave to defend, the Competent Authority also considered the bank statements produced by the Respondent Nos 3 and 4 and observed that the payment of the monthly license fee was not according to the agreement and the defence put forth is moonshine defence.

13. The Competent Authority considered the facts relevant for deciding an Application under section 24 of the Rent Control Act. The provisions of section 24 of the Rent Control Act provides that a licensee in possession or occupation of the premises given to him on license for

residence shall deliver possession of such premises to the landlord on expiry of period of license and in default the landlord shall be entitled to recover possession by making an Application to the Competent Authority. The only satisfaction which is required to be arrived at by the Competent Authority is that the period of license has expired. Upon such satisfaction being arrived at, the Competent Authority is required to pass an order of eviction of licensee and if the possession is not delivered on expiry of period of license and the licensee continues in possession of the licensed premises till he is dispossessed by the Competent Authority the liability is to pay damages at double the rate of license fees.

14. By precisely following what is required to be done under the provisions of section 24 of the Rent Control Act, the Competent Authority has directed respondent Nos.3 and 4 to handover vacant and peaceful possession of the licensed premises, payment of arrears of licensed premises and payment at double the rate of monthly compensation from the date of expiry of the license till handing over the possession of the premises.

15. The Revisional Authority got swayed by the arguments of learned counsel for Respondent Nos.2 and 3 that there had been an oral agreement and as such the period was extended till April, 2022. The Revisional Authority failed to consider that the case of the Respondent Nos

3 and 4 was that the husband of the Petitioner had agreed to orally extend the term of the agreement for period of one year. The Petitioner was the licensor and had executed the leave and license agreement with the Respondent Nos 3 and 4. Any oral agreement between the husband of the Petitioner and the Respondent Nos 3 and 4 is not binding upon the Petitioner. Further the Appellate Authority also failed to consider that the Competent Authority while rejecting the leave to defend had scrutinized the bank statements produced by the Respondent Nos 3 and 4 and observed that the payment of monthly license fee was not as per the agreement. The Revisional Authority failed to take into consideration the provisions of Section 55 of the Rent Control Act which requires the leave and license agreement to be in writing. No doubt the provisions of Sub Section (2) of Section 55 of Rent Control Act provides that in the absence of written registered agreement the contention of the tenant as regards the terms and conditions of the agreement will prevail, however, in the present case, the contention of Respondent Nos 3 and 4 is that it is the husband of the Petitioner who had orally agreed to extend the period.

16. That apart, without considering that even that period of one year which was till April' 2022 has expired, the Revisional Authority has remanded the matter for the purpose of giving an opportunity to

Respondent Nos 3 and 4 to lead evidence to prove their defence. The Respondent Nos 3 and 4 had come with two submissions in their defence firstly that the husband of the Petitioner had orally agreed to extend the term for one year till April, 2022 and secondly that payment of monthly license fees was paid which is reflected in the bank statements. In my opinion, the Revisional Authority has completely misdirected itself in remanding the matter as the period of the registered leave and license agreement had expired and no defence has been put forth by the Respondent Nos 3 and 4 which would disentitle the Petitioner who is the licensor to recover the possession of the licensed premises. There is no case of oral agreement between the Petitioner and the Respondent Nos 3 and 4. The bank statements were scrutinized by the Competent Authority who observed that the payment of the monthly compensation was not as per the terms of the agreement.

17. Despite the above, from April'2022 till November'2023 the respondent Nos.3 and 4 on one pretext or another has continued to remain in possession of the premises without paying a farthing to the petitioner for their continued occupation. It is sought to be justified by the learned counsel for respondent Nos.3 and 4 by submitting that on one or two occasions the monthly compensation of about Rupees Three Lakhs was

sought to be tendered to the petitioner, but that she had refused to accept the same. In my opinion, the refusal was perfectly justified considering that the arrears of license fees is Rs.1,04,08,510/-. By attempting to tender a meager amount as monthly compensation, the unauthorized occupation in the licensed premises cannot by any means be justified. This is classic example as to how the process of the Court is abused by respondent Nos.3 and 4 and without making any payment the unauthorized occupation continues. During the hearing of the proceedings considerable latitude was sought to be given to respondent Nos.3 and 4 to come up with the acceptable time schedule within which the outstanding arrears of the license fees would be paid. A chart has been furnished by the Respondent Nos 3 and 4 which indicates that very meager amount of Rs.15 Lakhs and Rs. 10 Lakhs would be paid on or before 5/12/2023 and thereafter from 31/12/2023 till 31/1/2024 the balance amount would be paid . This time chart was rightly rejected by learned counsel for petitioner by pointing out even as per their own undertaking given to this Court, the Respondent Nos 3 and 4 are required to vacate on or before 21/1/2023 and as such the payments agreed to be paid on 21/1/2024 and 31/1/2024 is meaningless. Learned counsel appearing for petitioner submits that on each and every date of hearing such assurances and undertakings were given through different counsel appearing on different dates and none of these has been substantiated. Today also, what I find is the same assurance being given. On the last occasion i.e. on 27/10/2023 the without prejudice chart tendered by learned counsel for the petitioner was disputed by learned counsel for respondent and it was admitted that the arrears are approximately in the sum of Rs.75 Lakhs. As the admitted amount was in the sum of Rs.75 Lakhs, this Court by order dated 27/10/2023 directed the respondents to deposit a sum of Rs.50 Lakhs in this Court on or before 9/11/2023. Today what is sought to be tendered is an amount of Rs.15 Lakhs with no application seeking indulgence of this Court to extend the time for deposit of the amount as directed. The manner in which the entire proceedings have been handled would indicate that respondent Nos.3 and 4 are confident that their assurances repeatedly given at different point of time before different Court would gain some more time and will prolong their unauthorized occupation of the licensed premises. This Court in spite of the above fact was inclined to give one or more opportunity to respondent Nos. 3 and 4 provided on or before 21/1/2024 the entire arrears were cleared. Learned counsel for Respondent on instructions submitted that respondent Nos.3 and 4 are neither financially capable nor willing to do so. His request to accept the time line submitted by respondent Nos.3 and 4 , in the facts of the present case, would be nothing less than travesty of justice. Indulgence to one party cannot result in severe injustice to the other party. It needs to be noted that only assurances have been forwarded by respondent Nos.3 and 4 without there being any deposit being made and for the first time meager amount of Rs.15 Lakhs is sought to be tendered which has been rightly rejected by learned counsel appearing for the Petitioner.

18. Apart from the above, there are no submissions on the merits of the case to justify that any defence is available to the Respondent Nos 3 and 4 which would support the order of remand. One another ground sought to be canvassed is that there was deduction of certain TDS amount. As regards payment of TDS, I find that the sum is hardly in the range of Rs.10-12 Lakhs and it is expected that if such payment is required to be adjusted, the same will be adjusted by the petitioner. Apart from above, there is no defence which is available to respondent Nos.3 and 4 which would justify the continued occupation.

19. This petition has been filed in the year 2022 and learned counsel for Petitioner has submitted a chart depicting that there were 22 dates of hearing in the present petition. Much less said about the submissions made by learned counsel for respondent Nos.3 and 4 on these 22 dates of hearing is better.

20. Having regard to the discussion above, the order of the Revisional Authority remanding the matter without any defence being available to the Respondent Nos 3 and 4 and without appreciating that even the extended period of leave and license agreement, if any, has expired is perverse and deserves interference by this Court.

21. In view of the above, the petition succeeds and stands allowed in terms of prayer clause (a).

22. In the facts of the present case, in my view, to relegate the petitioner to the remedy of execution, will result in unnecessary and unreasonable delay by respondent Nos.3 and 4. In my opinion, interest of justice requires that Court Receiver be appointed with a direction to take possession of the premises from respondent Nos.3 and 4 and handover vacant and peaceful possession to the petitioner. If there is any resistance by respondent Nos.3 and 4 the Court Receiver to take assistance of police officials and get the premises vacated. As regards arrears of the license fees, necessary Application can be moved before the appropriate forum by the petitioner.

23. Court Receiver is directed to take possession within a period of one week of the order being submitted to the Court Receiver by the Petitioner. The Court Receiver is directed to submit a report to this Court

upon reopening. List the petition 'For Compliance' on **1/12/2023.**

24. At the stage, learned counsel appearing for respondent Nos.3 and 4 seeks stay of the order. The request for stay is rejected.

**(SHARMILA U. DESHMUKH, J.)**