



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 14611 OF 2022

Kishor Madhukarrao Kende

... Petitioner.

Versus

M. Murali @ Murali Madathil and Ors.

... Respondents.

Mr. Akshay S. Malviya, Advocate for the Petitioner.

Mr. Saif Dingankar i/by Mr. Aniket Mokashi, Advocate for Respondent No.1.

Mr. C.D. Mali, AGP for Respondent No.2.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : NOVEMBER 28, 2023.

P. C. :

1. By this petition, the challenge is to the order of the Revisional Authority dated 10th August, 2022 rejecting the Revision Application against the order of the Competent Authority allowing the application and directing the Petitioner to handover vacant and peaceful possession of the licensed premises.

2. The facts of the case are that an application came to be filed under Section 24 of the Maharashtra Rent Control Act, 1999 (for short, "*MRC Act*") by the Respondent no.1. It was contended that the licensed premises was permitted to be occupied by the Respondent

No.1 as per the leave and license agreement dated 10th August, 2018 executed between the Petitioner and the Respondent no.1 for a period of 11 months commencing from 1st June, 2018 to 30th April, 2019, on monthly compensation of Rs.10,500/-. It is contended that the Respondent was irregular in paying the compensation and after the period of the leave and license agreement expired by efflux of time by 30th April, 2019, the Respondent did not handover the vacant and peaceful possession.

3. Upon service of the notice/summons, an application was filed by the Petitioner herein seeking leave to defend under the provisions of Section 43 (4)(b) of the MRC Act. The case put forward in the application for leave to defend was that there was oral agreement between the parties as regards the sale of premises for a sum of Rs.30 lakhs out of which a sum of Rs.2 lakhs was paid as earnest money and the balance was to be paid after obtaining bank loan. It was contended that as there was a hotel in the vicinity which disturbed the occupation of the occupants of licensed premises, for the purpose of ascertaining that the premises can be occupied or not it was decided to reside in the premises on leave and licence basis and as such leave and license agreement was entered into in 2014. It

was denied that leave and licence agreement was entered into on 10th August 2018. On the basis of the oral agreement for sale, it is contended that the provisions of Section 24 of the MRC Act will not apply.

4. It was also contended that the contention of the Applicant that four months prior to the expiry of licence, licence fees is not paid is incorrect as the license fees was regularly paid by the Applicant through his bank account as well as bank accounts of his family members and in that respect bank statement would be produced.

5. The Competent Authority rejected the application for leave to defend observing that there was no dispute regarding the execution of leave and license agreement and that the main grievance is that there was an oral agreement of sale between the parties. Taking into consideration the admission of execution of leave and license agreement, and the fact that after the expiry of period of license, the petitioner failed to vacate the premises, rejected the application for leave to defend. By the judgment of even date, the application under Section 24 of the MRC Act was allowed. As against which, the revision application was preferred under Section 44 of the MRC Act.

6. The Appellate Court observed that the record indicates that the Respondent is the lawful owner of the licensed premises which ownership is not disputed by the Petitioner. The Appellate Court has also observed that leave and license agreement is admitted and the period of agreement is terminated by issuing termination notice and notice is issued for vacating the premises after expiry of license period. The Appellate Court observed that there was no document placed on record that the Petitioner was permitted to occupy the premises other than as licensee and as such rejected the revision application.

7. Heard Mr.Malviya, learned counsel for Applicant and Mr.Dingankar, learned counsel for Respondent and Mr.Mali, learned AGP for Respondent No.2-State.

8. Mr. Malviya submits that it was the specific case of the Applicant that there was oral agreement of sale between the parties. He would further submit that as the leave and license agreement and the execution of the leave and license of the year 2018 was denied on the ground that the same is forged document, the leave to defend was required to be given. He would further point out the leave and license agreement which is annexed at page no.38 of the petition and

would submit that the stamp-paper bears the date of 10th August, 2018 and the same has been sold to the Respondent on 18th August, 2018, and whereas the date of execution of the agreement is shown as 10th August, 2018. According to him, the same is prima facie indicative of the fact that the document is a forged document.

9. He would further point out that after refusing the leave to defend, on the same date the application was allowed. He would further submit that there was an amendment to the application and without giving an opportunity to the Petitioner to contest the same, the application for amendment came to be allowed. He also points out that in the order on the application for leave to defend, the Competent Authority has noted that since 8th April, 2021, the Respondent remained absent for hearing. He submits that due to COVID situation, the Petitioner had remained absent and in view of the decision of the Apex Court in *Suo Motu Writ Petition (C) No.3 of 2020*, the hearing on the application for leave to defend should have been adjourned. In support of his contention, he relies upon the decision of the Apex Court in the case of **Precision Steel and Engineering Works vs. Prem Deva Niranjana Deva Tayal**, reported in [1982 (3) SCC 270].

10. Considered the submissions and perused the papers.

11. The application has been filed under Section 24 of the MRC Act, pleading that there was leave and license agreement entered into between the parties dated 10th August, 2018, which expired by efflux of time on 30th April, 2019 and as the Petitioner failed to handover the vacant possession, the application under Section 24 has been filed. The leave and license agreement annexed at page No.38 of the petition would indicate that the same is signed by the Petitioner and the Respondent and the photographs of the parties are also affixed on the leave and license agreement. The contention of learned counsel for the Petitioner is that the stamp-paper is dated 10th August, 2018 is irrelevant as it is mentioned in the covenant that the permission to occupy is granted for the period from 1st June 2018 to 30th April, 2019. It appears that the date of 10th August, 2018 is in fact the date with effect from which the leave and license agreement is to take effect.

12. The case put forward in the application for leave to defend was that there is oral agreement of sale between the parties. Pertinently, in the said application for leave to defend there is categorical admission by the Petitioner that leave and license

agreement was entered into between the parties and that the Applicant was residing in the premises since 2014 by virtue of the leave and license agreement. As regards the leave and license agreement of 2018 is concerned, the only pleading which can be found in paragraph No.11 of the application for leave to defend is of denial of the existence of the leave and licence agreement. Apart from general denial of the execution of the leave and license agreement there is no specific pleading to the effect that the leave and license agreement is a forged document. Indeed such a submission could not have been advanced in view of the fact that on the leave and license agreement the photograph of the Petitioner is affixed and his signature is also appended on the leave and license agreement which is not disputed. It needs to be noted that in the same paragraph, the Petitioner while denying the contention of the Respondent as regards arrears of about four months prior to expiry of terms of agreement on 30th April 2019 has categorically pleaded that the license fees was regularly paid through the bank account of Petitioner as well as his family members. As such, it can be inferred that pursuant to the leave and license agreement the permission was granted to occupy the licensed premises which expired by efflux of

time of 30th April, 2019.

13. Pertinently, there is no material produced on record to indicate that there was any oral sale agreement between the parties. Even if there was an agreement it does not appear to have been fructified and in fact what appears is the occupation of the licensed premises pursuant to a leave and license agreement. For the purpose of grant of leave to defend under the provisions of Section 43 of the MRC Act, what is required to be shown are the facts which would disentitle the licensor to recover the possession of the premises. There is no material produced on record to demonstrate that the licensor was dis-entitled to recover the possession.

14. The Competent Authority by order dated 3rd September, 2021 passed below Application for leave to defend has rightly considered the relevant factors and has observed that once there is admission about leave and license agreement, upon expiry of period of license, the Respondent is required to vacate the possession of the application premises. The Competent Authority has therefore, rightly rejected the application for leave to defend. The contention of learned counsel for the Petitioner that on 8th April, 2021, the Respondent had remained absent as such the hearing was required to

be adjourned by placing reliance of the Suo Motu Writ Petition (C) No.3 of 2020 of the Supreme Court which extended the period of limitation, has no relevance in the present case. The Competent Authority has decided the Application for leave to defend on merits based on the pleadings and the documents which are placed on record.

15. The Competent Authority observed that by a Circular dated 29th July, 2021, the High Court had directed the regular functioning of the Court to commence. As such after considering the merits of the case, the application for leave to defend was rejected. There is no irregularity/illegality committed by the Competent Authority while deciding the application on merits. It is not the case that the Petitioner was not aware of the pendency of the proceedings and as such it was his duty to remain present during the hearing and to ensure that the applications are argued. The Courts are not the helpless to pass the order on merit, in event, the litigant fails to remain present.

16. The Competent Authority under the provisions of Section 24 of the MRC Act is required to ascertain the existence of the leave and license agreement and to ascertain that the landlord is entitled to

recover the possession of the premises on expiry of period of leave and license and upon such satisfaction arrived at, is required to pass the order for eviction.

17. The Competent Authority by taking into consideration the admissions in the application for leave to defend and after considering the leave and license agreement which has been produced on record has precisely done what is expected of Competent Authority under the provisions of Section 24 of the MRC Act. As regards the contention that during the amendment of the Application under Section 24 of the MRC Act, the Petitioner was liable to be heard, it needs to be noted that by the amendment what was only sought to be done is that in the application instead of Maharashtra License Fees Control Act, the words 'Maharashtra Rent Control Act' were inserted. It appears that while filing the application the Act was wrongly worded and as such, without any change in the body of the application, the correct Act was sought to be incorporated in the title as well as in the prayer clause. There was no substantial amendment which would require an adjudication and as such the presence of the Petitioner was not necessary at the time of allowing the amendment application.

18. The provisions of Section 24 of the MRC Act provides for a summary procedure for eviction of the licensee who has overstayed his welcome after the expiry of period of license and the only satisfaction required to be arrived at by the Competent Authority is the existence of leave and license agreement and the expiry of period of license. The very admission of the Petitioner that the occupation of the license premises was pursuant to a leave and license agreement and that the license fees was paid regularly by the Petitioner through his bank account and the bank accounts of his family members coupled with the absence of any material to demonstrate that there was an oral agreement of sale which fortified into a sale deed/conveyance deed, no fault can be found with the impugned order directing the Applicants to vacate and handover the possession of the licensed premises.

19. As regards the decision in the case of the **Precision Steel and Engineering Works**, what the Apex Court has held that if the affidavit discloses the facts which would dis-entitle the plaintiff from seeking possession mere disclosure of such facts is sufficient to grant leave. In the present case, the pleadings in the application for leave to defend in fact admits the existence of the leave and license agreement and

that being so, there was no defence which was put-forth which would dis-entitle the respondent landlord–licensor to recover the possession of the licensed premises. The decision in the case of **Precision Steel and Engineering Works**, is distinguishable on the facts of the case.

20. In view of the above, there is no merit in the petition. Petition stands dismissed.

(Sharmila U. Deshmukh, J.)

21. At this stage, a request is made by learned counsel for the Respondent no.1 for withdrawal of the amount deposited by the Petitioner in this Court as arrears of compensation. This request is opposed by learned counsel for the Petitioner by submitting that he intends to challenge the order in the Apex Court and seeks stay of the order. The effect of the present order is stayed for a period of four weeks from the date of uploading of the order on the official website of the High Court of Bombay. If within a period of four weeks, appropriate relief is not granted by the Apex Court, the Respondent no.1 will be at liberty to withdraw the amount of compensation deposited in this Court.

(Sharmila U. Deshmukh, J.)