

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 16026 OF 2022

Mrs. Amber Farhad Patka Alias
Mrs. Amber A. Majid Patel,
Aged 48 years, Occu.: Private Tutition,
Residing At Vasant Building,
Office No. 16 B, 2nd Floor,
Peddar Road, Mumbai – 400 026.

...Petitioner

Versus

Mr. Ekram K. Ahmed Khan
Aged 80 years, Occu.: Serving,
NRI, Residing At Vasant Villa,
2nd Floor, Flat No.9,
Opp. Activity High School,
Peddar Road, Mumbai – 400 026,
Represented By The Constituted,
Attorney Mrs. Seema Shankarlal Thakur,
Age 56 Years, Presently Residing At 183/C,
Kalpataru Towers, Akuruli Road, Kandivali,
Mumbai – 400 101.

...Respondent

Mr. Pradhan i/by Pradhan & Usman Associates for the Petitioner.

Mr. A. M. Saraogi i/by Mr. D. B. Jaiswal for the Respondent.

CORAM : SHIVKUMAR DIGE, J.

DATE : 24th APRIL, 2023.

JUDGMENT :

1. Heard learned Counsel for the Petitioner and learned Counsel for the Respondent.

2. Rule. Rule is made returnable forthwith. By consent of both parties, the matter is heard finally.

3. It is contention of learned Counsel for the Petitioner that the Petitioner had taken the suit premises situated at Flat No.9, 2nd Floor, Vasant Villa, near Peddar Road, Mumbai (for short 'suit premises') on rent from the power of attorney holder of the Respondent, Mrs. Seema Shankarlal Thakur by way of leave and license agreement dated 26th April, 2018. The leave and license agreement was executed between the Petitioner and Respondent for the period of 36 months commencing from 1st May, 2018 to 30th April, 2021. The deposit was of Rs. 2,50,000/-. Total monthly compensation was of Rs. 90,000/-. Learned Counsel further submits that the Respondent issued a notice dated 28th May, 2018 and terminated the leave and license agreement. Learned Counsel further submits that the Respondent had taken monetary assistance/additional security deposit of Rs. 51,00,000/- from the Petitioner by executing an unregistered agreement on 9th May, 2018 which was duly signed and notarised mentioning the terms

and conditions, in spite of that, notice dated 28th May 2018 was served upon the petitioner for terminating the leave and license agreement. The petitioner filed reply dated 30th June 2018 to the said notice. Thereafter, the petitioner received termination notice dated 27th November, 2018 and before expiry of one month as mentioned in the said notice, the Respondent filed an Eviction Application No. 154 of 2018 before the Competent Authority. The Competent Authority passed an order dated 24th May 2022 rejecting the Eviction Application filed by the Respondent. Being aggrieved by the said order, the Respondent filed Revision Application No. 317 of 2022, before the Additional Commissioner, Kokan Division. The Additional Commissioner, by an order dated 21st September 2022, allowed the revision application filed by the Respondent and set-aside the order of the Competent Authority. Being aggrieved by the impugned order, the Petitioner is before this Court by way of the present petition.

It is the contention of learned counsel for the Petitioner that Mrs. Seema Shankarlal Thakur some time on 5th May 2018 approached and requested the Petitioner to give her monetary assistance of about Rs.60,00,000/- as the Respondent was in dire need of money. Mrs. Seema Shankarlal Thakur also offered that the present respondent

through her would pay interest to the Petitioner. The Petitioner, then, requested Mrs. Seema Thakur to give her few days to think over on the proposal. After few days, the Petitioner and Mrs. Seema Thakur finalized the deal of giving a sum of Rs.51,00,000/- to the Respondent/Mrs. Seema Thakur and it was mutually agreed that it would be adjusted as security deposit and the Petitioner would be charging an interest at the rate of 9% per annum, which would be adjusted against the monthly compensation/rent which was to be paid by the Petitioner to the Respondent. Further, it was also agreed upon that the said amount of Rs.51,00,000/- would be returned forthwith by the Respondent to the Petitioner along with the outstanding interest at the time of the Petitioner vacating the flat and then, the Petitioner handed over the sum of Rs.51,00,000/- to Mrs. Seema Thakur between the period of 9th May, 2018 and 24th May 2018 and executed the supplementary/additional agreement on 9th May 2018, which was duly signed and notarized, mentioning the terms and conditions as is enumerated in the said agreement. As per the said agreement, it was agreed that the licence period should be extended beyond the agreed period of 36 months for the 4th and 5th year period. Learned counsel further submits that the monthly compensation was adjusted in the interest of the above amount but this fact is not considered by the

Additional Commissioner and held that the Petitioner can approach the Civil Court for recovery of the amount of Rs.51,00,000/-. Learned counsel further submits that there was no violation of terms and conditions of the agreement executed between the Petitioner and Respondent but this fact is not considered by the Additional Commissioner. Hence, requested to allow the petition.

4. It is the contention of the learned counsel for the Respondent that the Respondent is the lawful owner of the suit premises. A Leave and license agreement dated 26th April 2018 was executed between the Petitioner and Respondent herein for a period of 36 months from 1st May, 2018 to 30th April 2021. A Hire Charges Agreement for the said period was also executed so as to allow the petitioner to use the furniture and fixture lying in the suit premises on hire basis. Learned Counsel further submitted that from the date of occupation of the premises, the Petitioner neither paid monthly license fees as per leave and license agreement nor monthly compensation as mentioned in the Hire charges agreement. At present, the total outstanding amount payable by the Petitioner to Respondent is Rs.74,36,000/-. Learned counsel further submitted that the Petitioner carried out alteration and repairs in the suit premises, in violation of terms and condition of the

agreement, due to which, the society levied fine of Rs.25,000/- on the Respondent and also imposed fine of Rs.1,000/- per day on Respondent, therefore, the Respondent issued noticed dated 28th May 2018 thereby terminating the Agreement dated 26th April 2018 as well as Hire Charges Agreement and called upon the Petitioner to vacate and handover the possession of the suit premises. The Respondent filed an eviction application which came to be rejected by the competent authority and subsequently, the Revision Application filed by the Respondent was allowed by the Revisional Authority and the order of the competent authority passed in Eviction Application was set-aside and the Petitioner was directed to handover vacant and peaceful possession of the suit premises.

Learned counsel for the Respondent further submitted that so far the issue of payment of hand loan/amount of Rs.51,00,000/- lakhs is concerned, there is nothing on record to show that the said amount of Rs.51,00,000/- was paid by the Petitioner to the Respondent. Learned counsel further submitted that the license of the Notary, who has registered the document in respect of the said amount, was suspended earlier. The said document is forged and fabricated. The license period is over. Learned counsel for the Respondent submitted that there is no merit in the petition and prayed for dismissal of the petition.

6. I have heard both learned counsel, perused the impugned order. Admittedly, the license period of the registered agreement was from 1st May 2018 to 30th April 2021. During the said period, the Petitioner was residing in the suit premises. The said period is over. It is the Petitioner's case that the amount of Rs.51,00,000/- was given to the Respondent as additional security deposit and unregistered additional agreement was executed between the Petitioner and Respondent. It was mutually agreed that the Petitioner would charge 9% interest per annum on the said amount, which would be adjusted against the monthly compensation, which was paid by the Petitioner to the Respondent. It is the contention of the learned counsel for the Respondent that the said additional agreement is false and fabricated. The license of the notary, who registered the said additional agreement, was suspended and at the relevant point of time, he was not the Notary Public. As per the Petitioner's case, Rs.51,00,000/- was given as an additional security deposit. In my view, the additional agreement is not registered. As per the Leave and License agreement, which is registered, only an amount of Rs.2,50,000/- was given as security deposit in respect of the suit premises. Whereas, by way of additional agreement, the amount of Rs.51,00,000/- is alleged to be paid, but this amount is not paid by way of cheque/demand draft but

it was paid in cash, that too, within 15 days of earlier executed agreement. The period mentioned in this agreement is of two years, it is also expired. The huge amount of Rs.51,00,000/- is paid in cash, it creates doubt about execution of additional agreement. Moreover, the additional agreement was executed before the expiry of period of earlier agreement. The period of registered leave and license agreement is over. The Petitioner has to vacate the suit premises as the period of agreement is over. It is contention of learned counsel for the Respondent that the Petitioner has not paid agreed monthly compensation, due amount is more than Rs.74,00,000/-. It is alleged that the amount of Rs.51,00,000/- was given as additional security deposit and it was agreed between the parties that the said amount would be returned at the time of vacating suit premises. In my view, the Petitioner can approach the Civil Court in respect of his contention of additional security amount of Rs.51,00,000/- but the Petitioner cannot reside in the suit premises on the basis of additional agreement. It is contention of learned counsel for the Petitioner that the contents of the additional agreement needs to be proved. In my view, the additional agreement cannot be considered as leave and license agreement for further period as it was executed within fifteen days of earlier agreement, which was registered. Moreover, execution of

additional agreement is disputed by the Respondent and termed it as false and fabricated. It is not registered though huge amount of Rs.51,00,000/- was paid in cash. As the period of registered leave and license agreement is over and on that basis, the revisional authority has passed the order, I do not find infirmity in it.

7. I have gone through all the case laws mentioned in the written submissions of learned counsel for the Petitioner. The facts of the cited case laws and the case in hand are different, as in the present case, the leave and license agreement was terminated by the licensor. The said period is over. The subsequent agreement is mainly for additional security deposit amount, it is not registered as well as it is alleged that it is false and fabricated.

8. In view of above, I pass following order :

ORDER

- i. Writ Petition is dismissed.
- ii. Rule is discharged.
- iii. No order as to cost.

(SHIVKUMAR DIGE, J.)