



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7241 OF 2019

Ms. Janice L. Fernande.

...Petitioner.

Versus

Mr. Sadanand Keshav Kanade
and Others.

...Respondents.

*Mr. Amogh Karandikar, Stephanie Richards for the petitioner.
Mr. Sanskar Marathe for respondent Nos. 1 to 5.
Mr. C. D. Mali, AGP for respondent no.6.*

Coram : Sharmila U. Deshmukh, J.

Date : December 19, 2023.

P. C. :

1. Challenge in the petition is to the order dated 31st March 2018 passed by the revisional authority upholding the order of competent authority directing the petitioner to hand over the vacant possession of the licensed premises and further directing her to pay to the respondent double the rate of monthly licence fee, i.e., @ Rs.58,000/- X 2 = Rs.1,16,000/- from the date of termination of leave and licence agreement, i.e., 1st April 2016 till the date the vacant possession of the premises is delivered to the respondent.

2. By the leave and licence agreement dated 21st October 2015

which was to take effect from 1st November 2015 to 31st October 2017, the suit premises was permitted to be occupied by the petitioner as a licensee on certain terms and conditions stated in the agreement. For the purpose of present petition the relevant clauses are clause nos. 15, 19, 23 and 24, which read thus :

- “15. It is also agreed by and between the parties that if the Licensee commits default in regular and punctual payments of monthly compensation as herein before mentioned or commits breach of any of the terms, covenants and conditions of this agreement or if any legislation prohibiting or restricting the Leave and License is imposed or impounding, the LICENSORS shall have all the rights to revoke the Leave and License forthwith and on such revocation being notified to the licensee in writing the licensee shall within one month from date of such notice of revoking the license addressed to where at the address herein-above given vacate themselves from the said premises.
19. In the event of any breach of the terms and conditions of this Agreement by the Licensee the LICENSORS shall be entitled to revoke and / or cancel the License hereby granted by giving one month's notice in writing and thereupon the Licensee shall remove themselves from the said premises/flat with all their goods and belongings. Vice versa the Licensee too will have the right to vacate the said flat by giving a notice in writing of one month to the LICENSORS in case of any breach of terms and conditions mentioned herein this agreement.
23. It is further agreed between the LICENSORS and the Licensee that the Licensee shall not do or suffer to be done anything in the said premises which is or is likely to be nuisance or annoyance to the other occupants of

the said building or to the prejudice in any manner to the rights of LICENSORS in respect of said premises.

24. It is hereby agreed by and between the parties to the agreement that notwithstanding anything herein contained the Licensee and the LICENSORS shall during the subsistence of this agreement and after the lock-in-period of 11 months, either of the parties will have the option to terminate this agreement by giving to the other side one month's prior notice in writing and this agreement will accordingly stand terminated on expiry of the said period or notice."

3. On 1st March 2016, the respondent issued a notice to the petitioner calling upon him to vacate the licensed premises by 31st March 2016 which came to be responded by the communication dated 23rd March 2016 wherein the petitioner contended that there is lock-in-period of 11 months and as such no notice of termination can be served. Subsequently the respondent vide letter dated 21st August 2016 acknowledged the lock-in-period and contended that he wanted to terminate the leave and licence agreement. On 30th September 2016, the respondent informed the petitioner that the cheques for the payment of compensation for month of May 2016 was dishonoured by the bank on account of insufficient funds and the compensation for the month of June is not yet paid. And as such he called upon the petitioner to vacate the premises. This notice came to be responded by the petitioner by communication dated 18th October

2016 contending that post dated cheques have been misused and there is no balance compensation. Pertinently, in this communication there is no denial of the dishonour of payment cheques for the month of May 2016. An eviction application came to be filed on 1st December 2016. The prayers of the said application read as under :

- "a) The Respondent be ordered and decreed to handover to the Applicants quiet, vacant and peaceful possession of the application premises viz. 1st floor, Apurva Building, Plot No. 451. Opp. Shardashram Society, Baburao Parulekar Marg, Dadar (West), Mumbai 400 028, along with the list of furnishings as stated in the Leave and License Agreement.*
- b) The Respondent be ordered and decreed to pay to the Applicants a sum of Rs.1,34,000/- (Rupees One Lac Thirty Four Thousand Only) as arrears of compensation payable up to 5th November 2016 being the arrears of damages due and payable up to the date of this application.*
- c) The Respondents be ordered and decreed to pay to the Applicant a sum of Rs.1,16,000/- per month as damages for wrongful occupation of the application premises from 5th December 2016 onwards till possession of the suit premises is handed over to the Applicants."*

4. The record does not indicate that any application for leave to defend was filed. The competent authority considered various clauses of the agreement and held that by the notice of 1st March 2016, the licence has been terminated and allowed the application as against which the revision preferred under section 44 of the Maharashtra Rent

Control Act, 199 was rejected.

5. Heard Mr. Amogh Karandikar, learned counsel appearing for the petitioner and Mr. Sanskar Marathe, learned counsel appearing for respondent nos. 1 to 5.

6. Learned counsel appearing for the petitioner points out Clause 24 of the leave and licence agreement which provides for a lock-in-period of 11 months and would submit that the agreement was sought to be terminated on 1st March 2016, i.e., before the expiry of lock-in-period and as such the termination itself was invalid. He further submits that the competent authority in paragraph no.11 of the order has erroneously held that in none of the covenants of leave and licence agreement there is any term as to the lock-in-period. As such, he would contend that there is an error apparent which would justify interference under Article 227 of the Constitution of India. He would further submit that the termination has taken place for the reason of keeping of pets in the premises and there is no default in payment of compensation. He would submit that the petitioner had paid the arrears of compensation and has handed over possession of the premises in June 2018. He further points out that the delay in handing over possession is by reason of an injunction granted in L.D.

suit No. 11 of 2017 filed by the petitioner before the Small Causes Court.

7. *Per contra* learned counsel appearing for the respondent points out that the existence of lock-in-period in the leave and licence agreement does not dis-entitle the licensor to terminate the agreement for breach of other covenants of the leave and licence agreement. He points out that the lock-in-period was on the terms and conditions which was mutually agreed between the parties and clause 15 enjoins upon the licensee to make regular monthly compensation payments and in event of default, Clause 19 of the leave and licence agreement permits the licensor to terminate the licence. He points out that by notice dated 30th September 2016, the licence came to be terminated as there was default in payment of monthly compensation. He further points out Clause 25 of the leave and licence agreement which according to him prohibits the licensee from committing any act which would cause nuisance or annoyance to the other occupants of the said building and submit that by reason of pets being kept in the premises by the petitioner, there was nuisance and as such the termination was valid.

8. Considered the submissions and perused the record.

9. The existence of leave and licence agreement is not disputed by the parties, neither the term of leave and licence agreement i.e., 1st November 2015 to 31st October 2017. Perusal of the clauses of leave and licence agreement would indicate that the licensee had agreed to make regular payment towards the licence fees and in event of breach of terms and conditions, Clause 19 permits the licensor to revoke or cancel the licence. Clause 24 provides for a lock-in-period of 11 months and thereafter the parties had an option to terminate this agreement by giving one month's prior notice in writing.

10. Learned counsel appearing for the petitioner submits that by reason of lock-in-period, for no reason whatsoever the contract can be terminated. Contractual provision in the leave and licence agreement providing for the lock-in-period is not void or illegal. However, it needs to be noted that the same cannot be construed so as to place a complete embargo on the right of licensor to terminate the agreement in cases where there is breach of terms and conditions of the leave and licence agreement. To interpret the lock-in-period in a narrow manner as is sought to be done by the learned counsel for the petitioner would render the other clauses as regards the breach of terms and conditions redundant. As such, in my opinion, clause 24 of

the leave and licence agreement cannot be read so as to exclude each and every clause of leave and licence agreement from operation during the lock-in-period and that even in event of breach, the leave and licence agreement cannot be terminated during the lock-in-period.

11. The first notice dated 1st March 2016 was issued for the reason that the pets were not removed from the premises. However, there was no eviction application filed on the basis of the said notice of 1st March 2016. Subsequently, by notice of 30th September 2016, breach of Clause 15 of the leave and licence agreement has been alleged inasmuch as it has been stated that there is a default in payment of rent. After this notice of 30th September 2016, the eviction application has been filed seeking a direction to the petitioner to hand over the vacant possession of the premises. Perusal of the pleadings in the eviction application would indicate that the applicants had pleaded about the default in making the timely and regular payment of the licence fees. Although it is sought to be contended that the licence fees has been paid in full and there are no arrears, pertinently, there is no application for leave to defend and as such the pleadings in the eviction application will have to be considered.

12. Considering that the term of licence was for the period from 1st November 2015 to 31st October 2017 and admittedly the premises has been handed over in the month of June 2018, the licensee has clearly overstayed his welcome and despite termination of the leave and licence agreement on 30th September 2016 has not handed over possession of the premises. The eviction application in prayer clause (c) seeks a direction to pay to the respondent a sum of Rs.1,16,000/- per month as damages for wrongful occupation of the premises from 5th December 2016 onwards till possession of the suit premises is handed over to the Applicants.

13. In view of the specific prayer which has been sought seeking double the amount of licence fee from the specific date, ie., from 5th December 2016, the order of competent authority directing the payment at double the rate from 1st April 2016 is clearly unsustainable. The competent authority failed to note that the pleadings in the eviction application specifically plead the default in making the timely payment of licence fees and the notice of termination is dated 30th September 2016. Although the competent authority has observed that in none of the covenants in the leave and licence agreement, any such term as to the lock-in-period has been

specifically mentioned, which observation is pointed out by learned counsel for the petitioner, in my opinion, the entire paragraph 11 will have to be read which deals with various clauses, i.e., clause 7, 19 and 4 of the leave and licence agreement and it is in that reference that the competent authority has considered that the clauses do not refer to any lock-in-period.

14. In the light of above, so far as the payment of damages at double the rate of licence fee is concerned, the date of termination although is 30th September 2016, considering the specific prayer seeking damages from 5th December 2016, the order of competent authority will have to be moulded accordingly.

15. In the light of above, the petition is partly allowed. Clause (iii) of the order of competent authority dated 14th November 2017 to read as under :

“The respondent is hereby directed to pay to the applicant, double the rate of monthly license fees, i.e., Rs.58,000 X 2 = 1,16,000/- from 5th December 2016 till the date the vacant possession of the premises is delivered to the respondent.”

16. Needless to clarify that the amount of security deposit as well

as the amounts which are lying in the courts below will be adjusted as against the arrears.

17. In view of the disposal of writ petition, interim application taken out in this writ petition does not survive and the same is disposed of.

[Sharmila U. Deshmukh, J.]