

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

WRIT PETITION NO. 2534 OF 2022

Shri Manoj S/o Bisandas Kamnani,
Aged about 37 years, Occ. Business,
Resident of C/o Meera Traders,
Opposite Jain Mandir, Parwarpura,
Itwari, Nagpur

...Petitioner

// VERSUS //

1. Smt. Anuradha W/o Arunkumar Jain,
Age about 53 years, Occ. Household,
Resident of Telipura, Opposite Jain
Mandir, Itwari, Nagpur

... Respondent

Shri K.K.Nalamwar, Advocate for the petitioner.

Shri A.K.Neware, Advocate for the respondent.

CORAM : ANIL S. KILOR, J.

DATED : 2nd AUGUST, 2023.

ORAL JUDGMENT :

Heard. Rule. Rule made returnable forthwith. Heard finally
by consent of the parties.

2. The present matter pertains to revocation of license. The plaintiff/respondent is a land lady who filed a suit for recovery of license premises, arrears of fees and damages. The suit property is a block in respect of which leave and license agreement was executed on 6th June, 2010 by the plaintiff in favour of the defendant as a licensee on monthly fees of Rs.12,000/- per month.

3. It is the case of the petitioner that the suit was dismissed by the trial Court vide judgment and decree dated 3rd March, 2017 and it was reversed by the First Appellate Court vide judgment and decree dated 4th March, 2021, by recording the perverse findings as regards the issue in respect of extension of a period of leave and licence upto 31st March, 2014. It is submitted that though the period of leave and license was extended from 1st April, 2012 to 31st March, 2014, before expiry of the period of leave and license, the suit came to be filed and as such the suit is premature.

4. The learned Lower Appellate Court, however, has held that the leave and licence period was expired on 31st March, 2012 and there was no renewal of leave and licence period as claimed by the defendant for the period for 1st April, 2012 to 31st March, 2014. It is further held that after the expiry of period of leave and licence on 13th November, 2012 was extended, the licence was revoked automatically.

5. The above referred findings recorded by the learned Lower Appellate Court are contrary to the oral evidence of the plaintiff.

6. The plaintiff in the chief-examination as well as in the cross-examination, has categorically admitted that she had extended the period of license from 1st April, 2012 for further period of 24 months on the same terms and conditions which have been agreed in the agreement Exhibit 19.

7. She has also admitted that in the said agreement Exhibit 19 there is a clause for extension of 24 months.

8. Thus, it is apparent on the face of the record that the issue is whether the suit was filed prematurely or not, which goes to the root of the matter and the same was not dealt by the learned Lower Appellate Court while reversing the judgment and decree passed by the trial Court, in light of the evidence available on record.

9. In the circumstances, I am of the considered view that the present matter needs to be remanded back to the learned Lower Appellate Court to decide the same afresh after hearing both the parties. Accordingly, I pass the following order.

- i. Writ petition is partly allowed;
- ii. The impugned judgment and order dated 4th March, 2021 passed by the Ad-hoc District Judge-03 and Assistant Sessions Judge, Nagpur is hereby quashed and set aside.
- iii. The Regular Civil Appeal No. 237 of 2017 is hereby remanded back to the District Judge, Nagpur to decide the same after hearing both the parties;
- iv. The parties shall appear before the learned First Appellate Court on **21st August, 2023**;

v. The learned first Appellate Court shall decide the appeal expeditiously, in any case, within three months from the date of appearance.

vi. The learned Appellate Court shall take into the issue of arrears of rent while deciding the appeal.

[ANIL S. KILOR, J.]

SACHIDANAND
KUTTAN NAIR

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