



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

WRIT PETITION NO.1432 OF 2024

1. Sudha Rajendra Mahajan
age 57 years, Occ. Household.
2. Subham Rajendra Mahajan,
age 24 years, Occ. Service.
3. Shilpa Rajendra Mahajan,
age 33 years, Occ. Household.

All R/o Municipal Council House no.167,
Ram Mandir Ward, Bhusawal,
Tq. Bhusawal, Dist. Jalgaon.

Petitioners.
(ori opponents.)

VERSUS

1. Vikas Narayan Patil
age 69 years, Occ. Retired,
Through His Power of Attorney,
Smt. Tilottama Vikas Patil
age 60 yrs, Occ. Household,
Both R/o A-201, Acro Police,
Opposite HDFC Bank, Thatte Nagar,
College Road, Nashik,
Tq. & Dist. Nashik.
2. The Additional Commissioner,
Nashik Division, Nashik.
3. The Competent Authority,
Rent Control Act,
Nashik Division, Nashik.

Respondents.

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Advocate for the Petitioner : Mr. A.S. Sawant
Advocate for Respondent 1 : Mr. S.B. Yawalkar
AGP for Respondents no.2 and 3 : Mr. S.N. Kendre

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CORAM : S. G. CHAPALGAONKAR, J.

Dated : 08th July, 2024

JUDGMENT :-

1. Rule. Rule made returnable forthwith. Heard finally with consent of parties at admission stage.

2. Petitioners (original opponents) have approached this Court under Article 227 of the Constitution of India assailing the order dated 13.10.2023 passed by the Additional Commissioner, Nashik in Rent Revision Application No.538 of 2023 by which the order dated 26.5.2023 passed by the Competent Authority in Summary Application No.7 of 2012 has been confirmed, directing eviction of petitioners from suit house property.

3. Respondent/(original applicant) herein approached the competent authority under section 24 of the Maharashtra Rent Control Act, 1999 claiming relief of recovery of possession and damages double the rate of fees. Respondent contends that he is the owner of house property situated at ground floor on Survey No.37/3, plot no.27 of Gurukul Housing Society. On 7.10.2003 a 'leave in license agreement, was executed in favour of late Rajendra Mahajan for the period of 11 months commencing from 7.10.2003 to 7.9.2004. The agreed rent was fixed at Rs.1,400/- per month which was regularly paid till expiry of the licence period. However, license premises was not vacated as agreed.

Prior to execution of the leave and licence agreement, the suit house was given to Raymond Woollen Mill on leave and licence basis. Rajendra Mahajan, being employee of said company, was occupying the premises. However, after dis-continuation of licence agreement with Raymond Woollen Mill, Rajendra Mahajan was put into possession on the basis of independent licence agreement dated 7.10.2003 between respondent and Rajendra Mahajan. After death of Rajendra Mahajan, his wife and daughters (petitioners) continued in possession of the suit house. (Parties hereinafter are referred to as per their original status.)

4. The applicant had issued a legal notice dated 2.8.2004 to Rajendra Mahajan asking him to vacate premises. He replied said notice through advocate V.K. Patil on 13.8.2004. After death of Rajendra Mahajan, another notice was issued on 23.01.2012 calling upon legal heirs of Rajendra Mahajan (petitioners) to vacate the premises and pay arrears of licence fees. However, contents of said notice were refuted by the opponents. Consequently, proceeding under section 24 of the Maharashtra Rent Control Act (for short referred to as 'Rent Act') was filed. The opponents were granted leave to defend. Consequently, they filed written statement. Opponents came with a case that the licence agreement is a forged document. Even, they denied the notice dated 2.8.2004 alleged to have been served upon late Rajendra Mahajan. They are coming with a specific case that

they are monthly tenants on the suit house since 1989. The agreed rent was fixed @ Rs.700 p.m. which is enhanced to Rs.1,000/- p.m. as per English Calender. The applicant is not issuing rent receipts. Opponents are paying Municipal Taxes and Electricity bills as per the Meter installed by the Raymond Woollen Mill.

5. Competent Authority / Trial Court framed issues based on pleadings of the parties, recorded oral evidence and exhibited the documents relied upon by the parties.

6. The leave and license agreement dated 7.10.2003 was not registered. Consequently, applicant had filed application for impounding of the document and as per permission granted by the Court, it has been impounded and registered. Trial Court, after hearing the parties passed order dated 26.5.2023 directing opponents to deliver possession of the suit house to the applicant alongwith damages, quantified @ double rate of license fees from 8.9.2004 till handing over of the possession. The opponents assailed the judgment and order of the Competent Authority in Rent Revision No.508 of 2023 under section 44 of the Rent Act before the Divisional Commissioner, at Nashik. However, vide order dated 13.10.2023 the same has been dismissed confirming order of the Competent Authority.

7. Mr. A.S. Savant, learned advocate appearing for the opponents submits that licence agreement was not registered, however, Trial Court illegally permitted its registration and impounding without any authority under law to pass such order. The orders passed below exhibits 7 and 11 dated 3.11.2012 and consequential registration of the document would not validate basic defect. Although, applicant has deposited penalty of Rs.5,000/- in terms of section 55 (3) of the Rent Control Act, no presumption can be attached to such document, which is otherwise available to duly registered document. Mr. Savant would further submit that leave and license agreement is not proved in accordance with law. In absence of registration of the document and proof of it's contents, case of the applicant could not have been accepted. He would further submit that applicant had issued legal notice in the year 2004 which was duly replied. However, present proceeding is instituted before the Competent Authority on 26.7.2012 which is patently barred by the limitation. Article 137 of the limitation Act would apply in facts of case which prescribes limitation period of three years from the date of cause of action. The suit instituted after period of 8 years from first cause of action is hopelessly barred by the limitation.

8. Per contra, Mr. Yawalkar, learned Advocate appearing for the applicant submits that section 24 (2) of Rent Act puts responsibility on the licensee to vacate

the premises on expiry of licence period. No limitation is prescribed under the Rent Act for institution of the proceeding for eviction and possession. Provisions of Rent Act are given overriding effect. No external aid can be resorted to incorporate the rigors of limitation Act. He would further submit that section 55 requires written leave and license agreement. Condition regarding registration is not mandatory, although, it provides certain consequences upon registration of the document. The signature of late Rajendra Mahajan on leave and license agreement was admitted in the reply notice of 2004. No dispute as regards to execution of the document can be raised at this stage. The Competent Authority as well as the revisional authority appreciated facts of the case in consonance with legal provisions governing the dispute and rendered concurrent decision. Hence, no interference is called in writ jurisdiction of this Court.

9. To buttress his submissions, Mr. Yawalkar, seeks to rely upon the judgment of this Court dated 5.12.2023 in case of **Ganesh Sonwane (Sonne) and others Vs. Khushalrao Sable and others in WP 9745 of 2011** to contend that while dealing with provisions of Hyderabad Tenancy and Agricultural Lands Act, this Court held that provisions of limitation Act would not be applicable for filing proceeding under section 98 seeking summary eviction. He would further place his reliance on judgment of this Court in case of **Amit B.Dalal Vs.**

Rajesh K. Doctor reported in 2010 (7) Mh.L.J. 1 to support his contention that registration of leave and license agreement is not mandatory and it can be proved on production of written agreement and can be treated as conclusive evidence of facts stated therein. He would further place his reliance on a judgment of the Supreme Court in case of **Uttam Namdeo Mahale Vs. Vithal Deo and others reported in 1997 (3) Mh.L.J. 695** to contend that in absence of prescription of limitation in Mamlatdar Court's Act, proceedings for execution under section 21 can be taken out at any time. Same analogy can be applied in present case.

10. Mr. Yawalkar would further rely upon the judgment of this Court in case of **Swami Attah Alias Rapheal Alfandry Vs. Mrs. Thrity Poonawala reported in AIR 1996 Bom 257** to contend that intention of the parties will have to be gathered from contents of the document and it is not permissible for Courts to draw any inference beyond contents of the document. Relying upon the judgment in case of **Rajendra B. Nair Vs. Suresh D. Dnyamothe and another reported in 2002 (4) Mh.L.J. 93**, he contends that parties are shut out to lead evidence to demonstrate that agreement was not a leave and license agreement but of tenancy contrary to the mandate of making written agreement conclusive evidence of the facts stated therein. He would further rely upon judgment in case of **Prakash H. Jain Vs. Ms. Marie Fernandes reported in AIR 2003 Supreme**

Court 4591 to contend that there is no scope to have recourse to any other provisions in very act or any other law, particularly, to apply the provisions of limitation act in the matters under Maharashtra Rent Control Act.

11. Having considered the submissions advanced and after going through the pleadings and evidence of the parties, it can be noticed that on 2.8.2004 the applicant had served legal notice upon Rajendra Mahajan asking him to vacate premises as period of leave and licence agreement dated 7.10.2003 had been expired on 7.9.2004. The said notice was replied by Rajendra Mahajan through advocate on 13.8.2004. In paragraph no.6 of the reply, he admits signature made on written document but with caveat that it is made without knowing it to be leave and licence agreement. Further, plea of tenancy has been raised. Perusal of the leave and licence agreement shows that it has been signed by Rajendra Mahajan in presence of the witnesses. The applicant produced original agreement dated 7.10.2003 at Exhibit-33. The applicant Vikas deposed before the Competent Authority at Exhibit-52 and proved the contents of the document. Once execution of the document is admitted, there is no impediment in reading the contents thereof. Terms agreement stipulates specific period of licence and incorporates undertaking to vacate the premises on expiry of the term. Finding recorded by the Courts

below on the aforesaid aspects are based on material on record. No perversity in findings is discernible.

12. Although, Mr. Savant, learned advocate appearing for the petitioner/opponent relies upon admission of AW-1 in cross examination stating that “My father had allotted disputed premises to the deceased Shri Mahajan on rental basis”, however, stray admission cannot be read ignoring other part of the evidence. The line before and after said statement clearly shows that witness conveyed that property was allotted on leave and licence basis. Further, as rightly pointed out by Mr. Yawalkar, once there is written agreement of leave and licence in terms of section 55 of the Rent Act, contents thereof would prevail and no oral evidence defying written agreement is acceptable. This Court in case of **Rajendra B. Nair** (supra) clearly observed that legislative mandate has to be given full force and effect and parties are shut out from leading evidence to demonstrate that agreement was not a leave and licence agreement. In light of the law espoused by this Court in various judgments, stray admission appearing in the cross-examination cannot be read contrary to the object of parties discernible from the written agreement.

13. The next question posed for consideration by learned Advocate Mr. Savant appearing for opponents is that, section 55 of Rent Act prescribes tenancy

agreement to be compulsorily registered and responsibility is fixed upon the landlord to get it registered. Consequences of non-registration are provided under sub-clause (2) of Section 55 of the Rent Act apart from the punishment under sub-section (3). He would therefore submit that in absence of registration of the document, document could not have been admitted in evidence. Consequently, by referring to provisions contained in Section 17 and 49 of the Registration Act, 1908 he would submit that document could not have been admitted in evidence for any purpose. Lastly, he submits that the document do not comply with mandate of section 32-A of the Registration Act, 1908. Consequently, the document placed at Exhibit-33 could not have been given any consideration. To buttress his submissions, Mr. Savant relies upon the judgment of **Guawahati High Court in case of Abdul Rahman Vs. Tahira Alom and others reported in (2023) 3 Gau LR 268.**

14. To appreciate the submissions advanced by Mr. Sawant, it would be apposite to refer to language of section 55 of the Rent Act.

15. Plain reading of the aforesaid section would show that agreement requires to be in writing besides it's registration. Sub-clause (2) provides consequences of non-registration that contentions of the tenant about terms and conditions subject to which a premises have

been given shall prevail unless proved otherwise. It can be thus observed that consequences of non-registration of the agreement is limited to the extent that tenant is given advantage in the matter of interpretation of document and clause (3) provides for penal consequences against the landlord. At this stage, it is desirable to refer to provisions of section 24 which provides for entitlement of landlord to recover the possession of premises given on license, on expiry. Sub-clause (b) of clause (3) of Section 24 stipulates that an agreement of license in writing shall be conclusive evidence of the facts stated therein. This Court had an occasion to deal with the aforesaid provisions in case of **Raj Prasanna Kondur Vs. Arif Taher Khan reported in 2005 (4) Bom.C.R. 125** and observed in paragraph no.14 thus :-

"14. The said Clause (b) in the Explanation to [Section 24](#) may, at first glance, appears to be contrary to the provisions under [Section 55](#) of the said Act, since Sub-section (1) of [Section 55](#) requires an agreement to be in writing, besides its registration being mandatory, and Sub-section (2) thereof provides that in the absence of written registered agreement, the contention of the licensee regarding terms and conditions of the agreement would prevail, unless proved otherwise. It is to be noted that the presumptive value attached to the contention of the licensee in relation to the terms and conditions of the license is for the eventuality of "absence of written registered agreement", whereas, the conclusive evidence spoken of under Clause (b) in the Explanation to [Section 24](#) relates to "facts" stated in the written agreement. Harmonious reading of [Section 55\(1\)](#) and (2) along with the said Clause (b) in the Explanation to [Section 24](#) of the said Act would reveal that though it is mandatory for the landlord to get the agreement of leave and license recorded in writing and

registered under the [Registration Act, 1908](#), failure in that regard would warrant consequences as stipulated under [Section 55](#) of the said Act, however, once the matter reaches the stage of evidence, and if there is an agreement in writing, though not registered, even then the facts stated in such agreement could be deemed to be conclusively established on the basis of such written agreement itself and there would be no other evidence admissible in that regard. On the other hand, the provisions of [Section 55\(2\)](#) and [55\(3\)](#) of the said Act relate to the consequences of failure on the part of the landlord to comply with the requirement of registration of the agreement. In other words though, in terms of Sub-section (2) of [Section 55](#) of the said Act, there will be presumptive value to the contentions of the licensee in respect of the terms and conditions of the agreement in the absence of the registered written agreement, nevertheless, once the agreement is in writing and even though it is not registered, the same, as regards the facts stated therein, would be deemed to have been proved conclusively on production of the agreement itself, and in which case, any presumption arising in relation to the terms and conditions of the license contrary to the facts stated in such agreement would stand rebutted.

16. This Court in case of **Amit B. Dalal Vs. Rajesh K. Doctor** reported in **2010 (7) Mh.L.J. 1**, in paragraph no.20 observed thus :-

20. There is one more important aspect of the matter. An agreement of leave and licence does not require registration under the [Registration Act, 1908](#) (hereinafter referred to as the said Act of 1908). [Section 49](#) of the said Act of 1908 provides that no document which requires registration either under [section 17](#) or under the [Transfer of Property Act, 1882](#) can be received as evidence of any transaction affecting such property unless it has been registered. Thus [section 49](#) of the said Act is applicable only to the documents which require registration either under [section 17](#) of the said Act of 1908 or under the [Transfer of Property Act, 1882](#). Under the said Act, while providing for consequences

of non-registration, the legislature has not chosen to provide for drastic consequences as provided under [section 49](#) of the said Act of 1908. Therefore, non-registration of a document required to be registered under [section 55](#) of the said Act attracts limited consequences provided under sub-[section 2](#) thereof apart from prosecution under sub-[section 3](#). An unregistered document which requires registration under [section 55](#) of the said Act can be read in evidence provided the same is proved and the same is otherwise admissible in evidence. [Section 49](#) of the said Act of 1908 will not be applicable to such document which is required to be registered under [section 55](#) of the said Act. Therefore, a document which requires registration under [section 55](#) of the said Act does not become an invalid document. The presumption under clause (b) of explanation to [section 24](#) of the said Act is applicable only when an application for eviction is filed relating to the premises given on licence for residence. In other proceedings, the said presumption may not apply. Therefore, notwithstanding the non-registration of an agreement in writing of leave and licence in respect of the premises given for residential use , when an application under [section 24](#) is made ,the clause (b) will apply to such agreement and it will not be open for the licensee to lead any evidence contrary to the terms and conditions provided in the said agreement.”

17. The aforesaid observations and conclusions by this Court is complete answer to the contentions raised on behalf of the petitioners. Once document is in writing and it's contents are proved by producing original leave and license on record, there is no impediment in accepting it in evidence, particularly, on the ground that it has not been registered. As observed by this Court, drastic consequences of non-registration of the document compulsorily registrable under section 17 of the Registration Act are not akin to consequences

provided under section 55 of the Rent Act. Therefore, analogy and effect of non-registration of the document contemplated under registration Act cannot be borrowed while dealing with unregistered leave and license agreement in proceeding for eviction.

18. Mr. Sawant, learned advocate appearing for petitioners further contends that, section 32-A of the Registration Act requires mandate that document shall have photograph affixed of person presenting the document. However, in facts of the present case, even accepting arguments advanced by learned advocate Mr. Savant subsequent registration of the document is ignored and assuming that document is unregistered, written leave and license agreement itself can be proved in evidence and admitted without impeded by its non-registration. Therefore, non-affixing of photographs on the document would be insignificant in facts of the case.

19. Mr. Sawant, further contends that application filed by respondent before the Competent Authority is barred by limitation since first cause of action arose on 13.8.2004 when Mr. Rajendra Mahajan replied the notice of eviction and present proceeding is instituted after death of Rajendra Mahajan on the basis of second notice dated 23.1.2012. According to Mr. Sawant, Article 137 of the Limitation Act would govern the proceeding. Therefore, application for eviction filed beyond period of three years from the date of first cause

of action is barred the by limitation. However, moot question that requires consideration is whether provisions of Limitation Act can be borrowed in proceeding instituted under the Rent Act. Pertinently, no limitation is prescribed under the Rent Act for institution of proceeding for eviction before the Competent Authority under section 42 of the Act. Under Section 39, Chapter VIII and Rule made thereunder is given overriding effect. Special procedure for disposal of the application is prescribed under section 43. Finality is given to the orders passed in revision. Therefore, Rent Control Act, 1999 is complete Code in itself and general provisions of Limitation Act cannot be derived. Once, Chapter VIII stands apart distinctly and diverse from rest of the Act and given overriding effect over any other provisions in the very Act or any other law in force having it's independent procedure, provisions of Limitation Act, 1963 would not attract to the proceedings before the Competent Authority.

20. Mr. Yawalkar, learned advocate appearing for Respondent no.1 has rightly pointed out that issue as regards to the applicability of the Limitation Act has been set at rest by judgment of the Supreme Court in case of **Prakash H. Jain Vs. Ms. Marie Fernandes reported in 2003 Supreme Court 4591** wherein scope and purport of section 43(4) of the Rent Act and power to condone delay has been elaborately discussed. Even

in case of **Uttam Namdev Mahale Vs. Vitthal Deo (supra)** while dealing with the provisions of Mamlatdar's Courts Act, Supreme Court observed that when the Act does not prescribe any limitation, necessary implication is that general law of limitation as provided under Limitation Act, 1963 stands excluded. Consequently, proceedings can be instituted at any time.

21. In view of the aforesaid discussion, there is no merit in the writ petition. Writ Petition stands dismissed. Rule discharged. No costs.

(S. G. CHAPALGAONKAR)
JUDGE

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