

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3381 OF 2024
WITH
WRIT PETITION NO.3382 OF 2024

Rajendra Babulal Jain	...Petitioner
Vs	
Jagtap Premdas Tiwari	... Respondent

Adv. Avinash Joshi a/w. Adv. Gautam Panchal & Adv. Dushita Shah
i/b. Gautam & Co., for the petitioner.

Adv. Anand Pande for the Respondent.

CORAM : RAJESH S. PATIL, J.

DATED : 6 MARCH 2024

P.C.:

1. The writ petition no.3381 of 2024 along with writ petition no.3382 of 2024 filed by the original defendant in eviction suit, challenging the concurrent findings recorded in an eviction proceeding arising out of leave and license agreement, and concurrently recorded in R.A.D proceedings “for declaration of tenancy” filed by the Petitioner in the Court of the Small Causes Court. It is the case of the petitioner that he is in possession of the suit premises, which is a shop premises admeasuring around 200 sq. ft. situated at Powai at Mumbai from the year 1997.

2. Mr. Joshi, learned counsel appearing for the petitioner

submits that the petitioner was in fact tenant of the suit premises and only for convenience an agreement of leave and license which is not a registered agreement has been executed between the parties. He submitted that in fact since the arrangement between the parties was that of a tenancy basis, however, only for the name sake an agreement of leave and license was entered into and as the owner was disputing there was a tenancy agreement, the petitioner herein filed an R.A.D. suit before the court of small causes seeking a declaration of the tenancy. He submitted that the said leave and license agreement was not to be acted upon hence, it was not registered. He also submitted that in fact, the arrangement between the parties was that of the petitioner would be purchasing the suit premises, in case, the respondent is not able to return back the money which was given to the respondent as a loan. He, therefore, submits that both the courts have not considered the vital evidence in this regard which was filed before the Trial Court.

3. Mr. Pande, learned counsel appearing for respondent submits that his client is the owner of the premises. He submits that his client had entered into a leave and license agreement for a period of one year with the petitioner. And periodical such leave and license entered between the parties, and in last of such agreement was entered into in the month of July 2006. He submits that the said leave and license period ended in the April 2007. He submits that even though for leave and license agreement was not registered still then eviction proceedings is maintainable. He submits that since after the leave and license period had come to

an end, as the petitioner was not ready to vacate the suit shop, his client filed an eviction proceedings in the Court of Small Causes being LE Suit No.186/216/2007. He submitted that evidence was led by his client and in the said evidence his client was not able to prove his case. He submits that accordingly an eviction decree was passed and the R.A.D suit filed by the petitioner was dismissed. So also an appeal filed against an eviction decree and against dismissal of the RAD suit were dismissed. He submits that the petitioner's case is of tenancy as far as suit premises is concerned, as the petitioner had filed an R.A.D. suit (declaratory suit as tenant). And also the petitioner is claiming ownership of the suit premises. He submits that the petitioner has knowingly signed not one but at least four leave and license periodically with the respondent. Therefore, he does lie now with mouth of the petitioner to deny that he was not the licensee of the suit premises. He submits that this court should not entertain both the Petitions and both the petitions will be dismissed with costs.

ANALYSIS AND CONCLUSION.

4. I have heard both the counsels and considered the impugned order and documents on record.

5. The eviction proceeding is filed before the Small Causes Court, which arises out of a leave and license agreement. In the judgment of *Raj Kondur v/s. Arif Khan* reported in **2005 (4) Bom. C. R.383** of this Court, it has been held that even though the leave and license agreement is not registered, eviction proceedings is maintainable. I have taken the same view in the judgment of

Dhun Dhunji Patel V/s. Kersi Minocher Gherda Deleted (Since Decd) & Ors. in Interim Application No.1111 of 2024 in Writ Petition No.1487 of 2024.

6. It is the case of the petitioner that even though the agreement was termed and mentioned as leave and license agreement, in fact, it was a tenancy agreement between the parties. After going through clauses of the agreement, I am of the view that the agreement between the parties was that of the leave and license. The leave and license agreement was for a period of one year, and the petitioner has thereafter entered into at least four such leave license agreements periodically. The signature of the petitioner on the leave and license agreement appears to be in English language, therefore, the petitioner was well aware about the contents of the leave and license agreement, and expise

7. The Respondent has by leading evidence proved that it was a leave and license agreement and after leave and license period was expired, the petitioner did not vacate the suit premises. Both the Courts below have concurrently held that it was a leave and license agreement and petitioner has failed to vacate the suite premises, and expire of the Leave and Licese period.

8. I do not find any infirmity in the order passed by the Courts, therefore, the Writ Petition No.3382 of 2024 is dismissed. No costs.

9. As regards the claim of the petitioner that even though the agreement entered between the parties is termed as leave and license, in fact, it was tenancy agreement. Hence, the petitioner

had filed an R.A.D suit (for declaratory suit of tenancy). However, even though the petitioner had claimed a tenancy, the petitioner in his evidence has claimed that there was an arrangement between the parties of ownership, hence, the claim that he become owner of the suit premises. The petitioner had referred to a document dated 26 March 2007, which mentioned that the petitioner would become owner of the suit premises in case, the rent amount of Rs.16,74,000/- paid and if not returned back then by payment of Rs.18,00,000/- he becomes owner of the suit premises. The Petitioner had led evidence to prove that he is tenant of the suit premises in the R.A.D. suit, however, the said evidence was disbelieved by the Court of Small Causes and suit filed by the petitioner was dismissed. So also the appeal filed against the dismissal of the R.A.D. suit, was also dismissed.

10. No case is made out to entertain the Writ Petition No.3381 of 2024. Hence, the same is dismissed. No cost.

(RAJESH S. PATIL, J.)