

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

Writ Petition NO. 5876 OF 2024

Vishal Narendra Bhuptani And Anr	...Petitioners
Versus	
Additional Divisional Commissioner And Ors	...Respondents

Mr. Amrut Joshi a/w Mr. Yazad Udwardia, Ms. Savita Suryavanshi
i/b Mr. Ashish Suryavanshi for the Petitioners.

Mr. Rajender S. Saluja i/b Mr. Uditkumar Gupta and C.R.Sharma
for Respondent No. 3 and 4.

Mr. P. V. Nelson Rajan, AGP for Respondent No. 1 and 2.

CORAM : RAJESH S. PATIL, J.

DATED : 2 MAY 2024

P.C.:

1. This writ petition is filed by a licensee challenging an order passed by the Revisional Authority (Additional Divisional Commissioner, Konkan Division), thereby rejecting an application for stay to the order passed by the Competent Authority.

2. Admittedly, there was a registered Leave and License agreement between the parties. Undisputedly both the parties have signed the said Leave and License agreement. So also as a matter of fact the license period had lapsed. The premises is a residential premises. After the license period was lapsed, the application for eviction was filed by the licensor under Section 24 of the Maharashtra Rent Control Act, 1999.

3. An application for 'leave to defend' was filed by the licensee. However, the said application seeking 'leave to defend' was filed after the period of limitation as contemplated under Section 43 of the Maharashtra Rent Control Act had lapsed. The said Application was rejected on 22 August 2023, therefore, the revision was filed by the licensee before the Additional Divisional Commissioner, Konkan Division. Before the Revisional Authority, the stay to the execution and implementation of the order dated 22 August 2023 passed by the Competent Authority was rejected by order dated 24 January 2024. The present Writ Petition challenges both the orders passed by the Authorities.

4. Mr. Joshi, learned counsel appearing for the licensee has made his submission that initially the licensee was the owner of the flat. However, due to the financial difficulties an agreement of sale was entered between the parties. The consideration has been paid by the respondent herein. However, the transaction was of a loan given to the petitioner. He submitted that in fact a leave and license agreement was entered by way of security.

5. Mr. Saluja appearing for the respondent/licensor submits that the entire payment of consideration was made to the Petitioner by way of direct payment and by way of taking over the housing loan which the petitioner had taken from the India Infoline Housing Finance Ltd. He submits that once the entire consideration was paid by respondent, he had become owner of the subject flat, however, by way of showing a good gesture respondent allowed the petitioner to stay over in the flat. He submits that the registered leave and license agreement entered

between the parties. However, the petitioner did not pay any of the compensation amount/ license fees to the respondent. Hence, an application under section 24 of the Maharashtra Rent Control Act was filed by the respondent. He submits that there is no perversity in the orders passed by the Competent Authority.

6. As per the clauses of agreement of sale dated 24 February 2020 his client being the vendors had agreed to sale the suit flat for consideration of Rs.2,00,00,000/- and subject to his client as vendor putting purchaser (respondent herein) in possession.

7. There is no dispute that the respondent herein has paid the consideration of Rs.2,00,00,000/- there is also no dispute that the leave and license agreement has been entered between the parties after the entire consideration being paid. There is also no dispute that leave and license period has lapsed.

8. In such a situation this Court is not supposed to go the interpretation of clause of the agreement of sale. Since there is no dispute that leave and license has lapsed.

9. As regards the judgment of Supreme Court in *Janak Dulari Devi and Anr. Vs. Kapildeo Rai and Anr* reported in (2011) 6 SCC 555, according to me, the said judgment is not under Section 24 of the Maharashtra Control Act. The facts of the said judgment it appears to be under the Transfer of Property Act. Hence, in the facts of the said judgment, the Supreme Court held that what has to be seen in the real intention between the parties. Therefore, according to me, this judgment will not be applicable to

the present proceedings, as in residential leave and license agreement all that one has to see is to whether the parties have signed the leave and license agreement and the license period has lapsed. As regards the order passed by this Court in the matter of ***Laxman Jagtap Vs. Additional Commissioner Konkan Division***, in Writ Petition NO. 579 of 2022. The said order is regarding a situation where the application is filed for leave to defend without a verification clause. In the facts of that particular matter such an application for Leave to Defend was rejected by this Court.

10. There is no merit in this Writ Petition. The present Writ Petition is stand dismissed.

11. At this stage, Mr. Joshi makes a request that four week time may be granted to vacate suit flat. Mr. Saluja has opposed this request. The Petitioner is granted four weeks time to vacate the suit flat, subject to the petitioner and all adult members of his family will file undertaking within one week from today, stating therein that they are the only members who are residing in the suit flat and they will not create any third party interest in the suit premises.

(RAJESH S. PATIL, J.)