

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13778 OF 2023

Sunil Bhagwat Pagare

... Petitioner

V/s.

The State of Maharashtra

Thr. The Office of the Government

Pleader and Ors.

... Respondents

Mr. Jitendra Kshirsagar a/w Mr. Harshad Kshirsagar, Advocate for the Petitioner.

Mr. Yogesh D. Keny, Advocate for Respondent No.5

Mr. P. P. Pujari, AGP for the State.

CORAM : RAJESH S. PATIL, J.

DATED : 16 JANUARY 2024

P.C.:

1. RULE. Rule made returnable forthwith.
2. This Writ Petition challenges an order passed by Competent Authority under Section 24 of the Maharashtra Rent Control Act and as confirmed by the Additional Commissioner, Kokan Division, Mumbai, by its Order dated 29 August, 2023.
3. The Petitioner herein had entered into an Leave and License agreement, dated 1 November 2021, with the Respondent (licensor). The said leave and license agreement was a registered agreement and the agreed license fees payable per month was

Rs.3500/- and a security deposit to be paid by the licensee / Petitioner to Respondent / licensor was Rs.10,000/-. It is an admitted fact that the Petitioner / licensee has not paid license fees even for a single month after entering into the leave and license agreement. However, it is been agreed that a sum of Rs. 10,000/- has been deposited as security deposit. Since the licensee did not pay the license fees the Respondent filed an eviction application before the Competent Authority on 20 May 2022. The Notices were served of the said proceedings on the Petitioner, however, the Petitioner failed to obtain leave to defend. As the Petitioner failed to file any such application within the period contemplated under the Act.

4. After hearing the parties and considering documents on record the Competent Authority by its order dated 15 November, 2022 directed the Respondent to hand over the vacant and peaceful possession of the suit premises to the Respondent. The Petitioner was also directed to pay arrears of license fee at the rate of Rs.3,500/-from 1 November, 2021 to 14 February 2022, and the Respondent were further directed to pay damages at the rate of Rs.7,000/-(Rs.3500x2) from 15 February, 2022 till handing over the possession of the suit premises. The Petitioner being dissatisfied carried the matter in Appeal before the Additional Commissioner, Kokan Division, u/s 44 of the Maharashtra Rent Control Act. The said Application filed by the Petitioner was also rejected by an Order dated 29 August, 2022.

5. Mr. Kshirsagar on instruction of his client submitted that even today the Petitioner is in possession of the suit premises.

Further Mr. Kshirsagar submitted that the Respondent is not the owner of the Suit premises, therefore, the suit for eviction was not maintainable. He therefore, submitted that therefore the impugned Order passed by both the authorities cannot be implemented. He submitted that his client will take at least five to six months to clear the entire outstanding amount. He further submitted that at present he can pay only a sum of Rs.7,000/-.

6. Mr. Kshirsagar also submitted that there is a government. Notification by which the Corporation had passed an Order that as regards the slum area premises cannot be given on leave and license basis. He therefore, submitted that even though the Petitioner signed leave and license agreement the suit for eviction was not maintainable. He further submitted that the Petitioner has filed few criminal complaints against the Respondent and Police Constable.

7. Mr. Keny appearing for Respondent No.5 / Original Applicant before the Competent Authority submitted that the Respondent is the owner of the suit premises. The petitioner entered the suit premises and now trying to take an undue advantage, were not vacated the premises and not paying even a single month rent. He submitted that leave and license agreement in registered leave and license agreement, which bear the signature of the Petitioner. He further submitted that there is no merit in the present Writ Petition as Respondent has failed to obtain leave to defend. He further submitted that without any basis technical objections are raised by the Petitioner. He submitted that Writ Petition should be dismissed with heavy cost.

8. I have considered the leave and license agreement. The agreement is registered as leave and license agreement. During the agreement period license fees Rs.3500/- per month will be payable. Admittedly the Petitioner / licensee has not paid license fees even for a single month. The leave to defend was also obtained by the Petitioner. The leave and license agreement was terminated on 14 February, 2022. There is no reason given by the Petitioner for not paying the license fee. The Petition is not entertainable.

9. At this stage petitioner seeks four weeks time to vacate the suit premises. Mr. Keny submits that the petitioner has already shifted children, in the near by locality. He submits that only to harass the respondent the Petitioner is trying to take undue advantage. Request made by the Petitioner is hereby rejected.

10. There is no merit in the present Writ Petition. Therefore, the Writ Petition is dismissed.

(RAJESH S. PATIL, J.)