

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

WRIT PETITION NO.6481 OF 2024

Aruna Pandit & Anr.

....Petitioners

V/S

Ravindra Dattatraya Kumar

....Respondent

Mr. Nirman Sharma a/w Mr. Ansh Kranawat, Mr. Rohan Munj i/b Mr. Jayesh Mistry *for the Petitioners.*

Mr. Girish R. Agrawal with Mr. Shubham Jangam, Mr. Shubham Jangam, Ms. Naiana Boraste *for Respondent.*

**CORAM: SANDEEP V. MARNE, J.
DATE : 19 JUNE 2024.**

P.C.:

1 The challenge in the present Petition is to the order dated 1 April 2024 passed by the Competent Authority rejecting the Application seeking leave to defend. Also challenged is the final eviction order passed by the Competent Authority on 1 April 2024 consequent to rejection of application for leave to defend.

2 I have heard Mr. Sharma, the learned counsel appearing for the Petitioners. He raises four principal grounds of challenge to the impugned orders. Firstly, he submits that Petitioner No.1 being real sister of the

Respondent, is excluded from the definition of term 'Licensee' under section 7(5) of the Maharashtra Rent Control Act, 1999 (**Rent Act**). Secondly, he would further invite my attention to the address disclosed by the Respondent in his application, which indicates that Petitioners and Respondent are residing together in the flat in question as members of the family. Thirdly, he would submit that in the application seeking leave to defend, the Petitioners have raised specific plea of alienation of family property by the Respondent by excluding the share of the Petitioners. That in view of specific pleas of inheritance and partition raised in the application, the Competent Authority ought to have held that the issues raised by the Petitioners warrant grant of leave to defend. Lastly, Mr. Sharma would submit that Petitioners have also pleaded the case of exercise of duress, on account of which the license agreement came to be executed between the parties. He would submit that Petitioners and Respondent have been residing together in the flat for over 20 years and that there was no need for the parties to execute the leave and license agreement. That the Application filed by the Petitioners specifically raises a defence that the agreement is an outcome of duress.

3 On the above four broad points Mr. Sharma would submit that the defences raised by the Petitioners are arguable and plausible defences. He would submit that under the guise of examining the defences raised by the Petitioners, the Competent Authority has adjudicated upon merits of such defences, which is impermissible while deciding application under section 43(4)(b) of the Rent Act. Lastly, Mr. Sharma would contend that the

Application has not been decided as per directions of this Court in order dated 27 September 2023 passed in Writ Petition No.12037 of 2020.

4 I have also heard Mr. Agrawal, the learned counsel appearing for the Respondent who would oppose the Petition and support the impugned orders passed by the Competent Authority.

5 Having considered the submissions canvassed by the learned counsel appearing for the parties, it is seen that execution of the Leave and License Agreement dated 15 January 2020 is not disputed by the Petitioners. Therefore, merely because Petitioner No.1 happens to be the real sister of the Respondent-Licenser, does not mean that she cannot be a licensee within the meaning of section 7(5) of the Rent Act. Though section 7(5) of the Rent Act seeks to exclude a member of the family residing together from definition of the term Licenser, such exclusion applies only in a case where there is no subsisting agreement for license between the parties. The Rent Act does not prohibit execution of license agreement between two family members residing together. Therefore, the exclusion of member of family would apply only in a case where there is absence of agreement for license between the parties. In the present case, there is specific Leave and License Agreement executed between the Petitioners and Respondent, under which Petitioners paid license fees to the Respondent from time to time and agreed to vacate the premises at the end of the license period. I am therefore not convinced by the first point sought to be raised by Mr. Sharma.

6 So far as the second issue is concerned, mere indication of address of Respondent of the premises in question in the leave and license agreement as well as in the application filed before the Competent Authority cannot be a reason alone for inferring that the parties are residing together in the same flat. It appears that the Respondent is otherwise the resident of Toronto. If Petitioner No.1 was residing in the flat as a member of the family of Respondent, there was no necessity for them to execute Leave and License Agreement. The moment of Leave and License Agreement is executed, residence in the flat would be governed by the terms of the license and the relationship between the parties becomes meaningless. Therefore, even on second ground, no arguable case is made out.

7 So far as the issues of inheritance and partition are concerned, the same is not germane to the Leave and License Agreement. If Petitioner No.1 claims any share in the licensed premises, it is for her to take appropriate steps in that regard. Her alleged claim of share in the licensed premises cannot be a ground not to vacate the premises at the end of the license period. Therefore even the third ground sought to be raised by Mr. Sharma does not involve any arguable or plausible defence.

8 The last ground of duress pressed into service on behalf of the Petitioners must be termed as ludicrous. Parties have acted upon the terms of Leave and License Agreement. In their Reply, Petitioners have given details of payment of license fees to the Respondent from time to time. In fact such

payment being made by the Petitioners to Respondent belies the theory of Petitioner No.1 residing in the licensed premises as a member of family of Respondent. Petitioners are not illiterate persons and have executed registered Leave and License Agreement and have acted upon the same. Therefore, the ground of duress sought to be raised again does not present any arguable or plausible defence.

9 After having considered the submissions canvassed on behalf of the Petitioners, I am of the view that all the defences sought to be raised in the application filed by the Petitioners are totally frivolous. The Competent Authority has rightly rejected application for leave to defend. I do not find any merit in the Petition. Writ Petition is accordingly rejected.

10 After the order is pronounced, Mr. Sharma would request to stay of the impugned orders for the period of four weeks. However making inquiry as to whether Petitioners are willing to file an undertaking to vacate the premises within agreed time, he would submit that he does not have any instructions in that regard. Considering the reasons recorded for rejecting the Petition, I am not inclined to stay the impugned orders, any further. The request for stay is accordingly rejected.

Digitally
signed by
SUDARSHAN
RAJALINGAM
KATKAM
Date:
2024.06.24
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+0530

(SANDEEP V. MARNE, J.)