

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO.6980 OF 2024**

Rubina Mohammed Ali Khan

*....Petitioner***V/s.**

Addl. Divisional Commissioner

Konkan Division and Ors.

*....Respondents***WITH****WRIT PETITION (STAMP) NO.17173 OF 2024**

Najmunnisa Mohammed Salim

Shaikh

*....Petitioner***V/s.**

Competent Authority, Konkan

Division and Ors.

....Respondents

Mr. Arman Parve with *Ms Bushva Sayed for the Petitioner in WP/6980/2024***Mr. Parvez Kabir** for the *Petitioner in WPST/17173 2024 and for Respondent No.3 in WP6980/2024.***Ms Sulbha Chipade**, *AGP for Respondent-State.*

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Date: 2024.06.27
17:58:19 +0530**CORAM : SANDEEP V. MARNE, J.****Dated : 25 June 2024.****P.C. :**

1) The challenge in the Writ Petition No.6980 of 2024 is to the order dated 1 April 2024 passed by the Additional Divisional Commissioner, Konkan Division, allowing revision application filed by Respondent No.3 and

setting aside order dated 10 October 2023 passed by the Competent Authority-Konkan Division in Eviction Application No.152 of 2023. By order dated 10 October 2023, the Competent Authority granted leave to defend to the Petitioner by allowing application at Exhibit-12.

2) I have heard the learned counsel appearing for the Petitioner and Respondent in Writ Petition No.6980 of 2024. After having considered the submissions advanced by the learned counsel appearing for the parties it is seen that there is a great deal of dispute about various agreements pertaining to the license of the premises. It appears that there are as many as three license agreements as under:-

- (i) License Agreement dated 7 April 2021 for the period from 18 March 2021 to 17 February 2022 in which the amount of license is shown to be 'Nil' and the amount of security deposit is shown to be Rs.4,50,000/-. The agreement also contends confusing covenant under which a 'licensor' has to reside in the premises and to pay Rs.11,000/- to the 'licensee'.
- (ii) Leave and License Agreement dated 10 November 2021 in respect of the period from 16 November 2021 to 15 October 2022. According to the Respondent this is the correct license agreement executed by the parties. Under this agreement again 'licensor' agreed to pay to the licensee Rs.6,000/- per month towards compensation and the licensee paid security deposit of Rs.2,50,000/- to the 'licensee'.
- (iii) Registered Leave and License Agreement dated 10 November 2021 in respect of the period from 16 November 2021 to 15 October 2022 under which the amount of security deposit paid by licensee to licensor is shown as Rs.6,50,000/- and license fee of Rs.1 per month was agreed to be paid.

3. In the light of the above three confusing and conflicting agreements, competent authority proceeded to grant leave to defend to the Petitioner. However, the said leave to defend has been withdrawn by the Additional Divisional Commissioner by order dated 1 April 2024 observing that the defence taken by the Petitioner is of civil nature and that the competent authority has no jurisdiction to entertain the said defence. Admittedly, license period of all the three agreements has already come to an end. There are conflicting liabilities in the three agreements in respect of payment of license fee. Two agreements ;provide for licensor paying license fee to the licensee whereas the third registered agreement payment of license fees by licensee to licensor but only of Rs.1.

4. Considering the above factual position, in my view this is a fit case where leave to defend has been correctly granted by the Competent Authority. Additional Divisional Commissioner has erred in setting aside order dated 10 October 2023.

5. Consequently, Writ Petition No.6980 of 2024 succeeds. Order dated 1 April 2024 passed by the Additional Divisional Commissioner, Konkan Division, is set aside and order dated 10 October 2023 passed by the Competent Authority is restored. The Competent Authority shall proceed to decide the Eviction Application in an expeditious manner, preferably within a period of four months from today.

6. In view of disposal of Writ Petition No.6980 of 2024 nothing would survive in Writ Petition (stamp) No.17173 of 2024, which is also disposed of.

[SANDEEP V. MARNE, J.]