IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9107 OF 2024

WITH

INTERIM APPLICATION NO. 9960 OF 2024

Vijaysingh Amarsingh Rajpurohit } ....***Petitioner***

: Versus :

The Additional Divisional Commissioner
and Ors. }....***Respondent***

Mr. Manek Kalyaniwalla *i/by. Mr. Harshal Damania, for the Petitioner.*

Ms. Tanya Goswami, AGP *for Respondent Nos.1 and 2.*

Mr. Omar Khaiyam Shaikh *a/w. Mr. Vikas Salvi, Mr. Ansari Shahzad i/by. Vikas Salvi & Associates, for Respondent No.3.*

CORAM : SANDEEP V. MARNE, J.

Dated : 4 July 2024.

P.C. :

1) The challenge in the present petition is to the order dated 26 March 2024 passed by the Additional Divisional Commissioner, Konkan Division allowing Revision filed by the Respondent No.3 under the provisions of Section 44 of the Maharashtra Rent Control Act, 1999 and setting aside the order dated 5 October 2023 passed by the Competent

Authority in Application No. 218 of 2022. By order dated 5 October 2023, the Competent Authority, Konkan Division, Mumbai had allowed the application filed by the Petitioner for leave to defend permitting the Petitioner to file Written Statement to oppose the Eviction Application.

2) There is no dispute to the position that initially, license in respect of the premises was executed by Respondent No.3-licensor in favour of the Petitioner-licensee on 9 August 2010 for a tenure from 1 April 2010 to 28 February 2011. According to Petitioner, after expiry of the said license on 28 February 2011, no further document was executed between the parties extending the tenure of license. Petitioner has come out with a case that in the year 2014, Respondent No.3 agreed to sell the premises to Petitioner and accordingly Memorandum of Understanding (**MoU**) dated 3 January 2014 was executed between the parties for purchase of the premises for consideration of Rs.29,50,000/-. It is Petitioner's case that out of the said agreed amount of consideration, an amount of Rs.15,00,000/- has been paid by the Petitioner to Respondent No.3 through her relative as indicated in the said MoU. Respondent No.3, on the other hand, denies execution of MOU dated 3 January 2014 or receipt of any consideration as alleged by the Petitioner.

3) Contrary to Petitioner's case that no license agreement was executed after 28 February 2011, it is Respondent No.3's case that following Leave & License Agreements have been executed between the parties from time to time :

Sr.No.	Period (From and To)	Compensation p.m. (In Rs.)
1.	Leave License Agreement for the period from **1/4/2010 to 28/2/2011**	12,000/-
2.	Leave License Agreement for the period from **1/3/2011 to 31/1/2012**	15,000/-
3.	Leave License Agreement for the period from **1/2/2012 to 31/12/2012**	15,000/-
4.	Leave License Agreement for the period from **1/1/2013 to 31/11/2013**	15,000/-
5.	Leave License Agreement for the period from **1/12/2013 to 31/3/2015**	15,000/-
6.	Leave License Agreement for the period from **1/4/2015 to 31/3/2017**	15,000/-
7.	Leave License Agreement for the period from **1/4/2017 to 31/3/2018**	15,000/-
8.	Leave License Agreement for the period from **1/4/2018 to 31/3/2019**	15,000/-

4) Petitioner denies execution of the License Agreements at serial nos.2 to 8 in the above chart and claims that the same are forged.

5) Thus, execution of Leave and License Agreement for the period from 1 April 2018 to 31 March 2019 is seriously disputed by Petitioner. Petitioner desires to raise before the Competent Authority twin disputes about non-execution of license agreements at sr. Nos. 2 to 8 and execution of MoU for purchase of flat and accordingly sought leave to defend the Eviction

Application. The leave was granted in his favour by the Competent Authority.

6) Perusal of the impugned order passed by the Revisional Authority would indicate that it has relied upon last Leave & License Agreement dated 23 August 2018 and has held that the license has expired on 28 February 2019. It has however not taken into consideration Petitioner's defence that the execution of the very agreement is under dispute. This is not a case where the last Leave & License Agreement expiring on 28 February 2019 is admitted by the Petitioner-licensee. In my view, therefore since execution of License Agreements at serial nos.2 to 8 indicated in the chart above is under dispute, grant of leave to defend by the Competent Authority appears to be in order. The Revisional Authority has erroneously reversed the order passed by the Competent Authority.

7) In my view, the Petitioner needs to be granted an opportunity to defend the Eviction Application since genuineness of the License Agreements at serial nos.2 to 8 in the above chart is under dispute. Though the Competent Authority may not strictly be concerned with the effect of the alleged MoU dated 3 January 2014 for specific performance of which, Petitioner has already filed a Civil Suit, atleast the evidence with regard to the execution or otherwise of the Agreements at serial nos.2 to 8 of the above chart needs to be taken into consideration by the Competent Authority while deciding the Eviction Application. The order passed by the Revisional Authority is thus indefensible and is liable to be set aside.

8) Since, leave to defend is being granted to the Petitioner to defend the Eviction Application, the next issue is about payment of license fees. Petitioner cannot be permitted to occupy the premises without making any payment to the Respondent. Perusal of the prayers made by the Respondent in her Eviction Application would indicate that prayer for payment of license fees from 1 April 2019 onwards is included in prayer clause (b) of the application. As per the last License Agreement relied upon by the Respondent, the license fees payable is Rs.20,000/- per month. Petitioner disputes execution of the said Agreement, as well as, liability to pay Rs.20,000/- towards license fees. In my view, considering the serious disputes between the parties, it would be appropriate that the Petitioner pays to the Respondent, without prejudice to his rights and contentions, monthly compensation of Rs.15,000/- from 1 April 2019 till date and continues to pay the same during pendency of the Eviction Application. The arrears of such compensation from April 2019 to July 2024 would be Rs. 9,60,000/- Mr. Kalyaniwalla, the learned Counsel appearing for Petitioner, on instructions from the Petitioner who is present in the Court, makes a statement that Petitioner shall pay the total amount of license fees due till July, 2024 of Rs.9,60,000/- in three installments of Rs.3,00,000/- by 31 July 2024, Rs.3,00,000/- by 31 August 2024 and Rs.3,60,000/- by 30 September 2024. The statement is accepted as undertaking given to the Court. The Petitioner shall pay the above amounts directly to the Respondent without prejudice to his rights and contentions and also continue to pay monthly compensation of Rs.15,000/- from August 2024 onwards till decision of the eviction proceedings on 10th day of each month.

9) Accordingly, the Writ Petition partly succeeds. The order dated 26 March 2024 passed by the Additional Divisional Commissioner, Konkan Division is set aside and order dated 5 October 2023 passed by the Competent Authority is restored. The Competent Authority shall proceed to decide the Eviction Application on its own merits, without being influenced by any of the observations made in the present order. Petitioner shall pay to Respondent monthly compensation as indicated in the preceding paragraph during pendency of Eviction Application. Parties would be at liberty to apply in case of any difficulty. In the event, the Petitioner commits default in payment of monthly compensation as directed above, the order passed by the Additional Divisional Commissioner dated 26 March 2024 shall automatically revive and the Competent Authority would be free to pass appropriate orders by ignoring the defence of Petitioner.

10) With the above directions, the Writ Petition is **disposed of.** Interim Application also stands disposed of.

[SANDEEP V. MARNE, J.]

NEETA SHAILESH SAWANT

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