

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 19491 OF 2024

Jambu Kumar Seth
Age: 56 years, Occupation: Business,
Indian Inhabitant, residing at
Flat No. 1701, 17th Floor, Nutan Annex Building,
Road No.3, Goregaon (West),
Mumbai 400 104.

..Petitioner

Versus

1. The State of Maharashtra,
Through Secretary of Government of
Maharashtra Mantralaya,
Mumbai 400 032.

2. Competent Authority Rent Control Act,
Konkan Division At Mumbai,
Having office at 5th Floor,
MHADA Building, Gruhnirman Bhavan,
Gandhi Nagar, Bandra East,
Mumbai, Maharashtra 400 051.

3. The Additional Divisional Commissioner
Konkan Division at Mumbai,
Office of the Divisional Commissioner, Konkan
Division, 1st Floor, Old Secretariat (Annex),
Karmaveer Bhaurao Patil Marg,
Fort, Mumbai 400 032.

4. Mehul Mehta
Age: 39 years, Occupation: Services

5. Ruchi Mehul Mehta
Age: 40 years, Occupation: Service
Both of Mumbai, Indian Inhabitants,

Digitally signed
by ARUN
RAMCHANDRA
SANKPAL
Date:
2025.08.14
17:40:02
+0530

Having address at Flat No. 1701,
17th Floor, Nutan Annex Building,
Road No. 3, Goregaon (West),
Mumbai 400 104, and
presently residing at Mehta's CE-157,
Sector 1, Saltlake (Near Arunachal Bhawan),
Kolkata – 700 064.

...Respondents

Mr. Aadil Parsurampur, with Viraj Bansod, i/b Tushar Goradia, for
the Petitioner.

Mr. Hamid Mulla, AGP, for Respondent Nos. 1 to 3.

Mr. Anil R. Mishra, for the Respondent Nos. 4 and 5.

CORAM: N. J. JAMADAR, J.

RESERVED ON : 30th JULY 2025

PRONOUNCED ON : 14th AUGUST 2025

JUDGMENT:

- 1.** Rule. Rule made returnable forthwith and, with the consent of the learned Counsel for the parties, heard finally.
- 2.** This Petition under Article 227 of the Constitution of India calls in question the legality and correctness of a judgment and order passed by the Additional Divisional Commissioner, Konkan Division, Mumbai, in Revision Application No. 832 of 2024, whereby the Revision preferred by the Petitioner against an order passed by the Competent Authority under Section 24 of the Maharashtra Rent Control Act 1999 ("the Rent Act 1999") came to be dismissed by affirming the order of eviction passed by the Competent Authority.
- 3.** Background facts can be stated in brief as under:

3.1 The Respondent Nos. 4 and 5 are the owners of Flat No. 1701, Nutan Annex Building, Goregaon (West), Mumbai (“the subject flat”). The Respondent Nos. 4 and 5 entered into a Leave and License Agreement dated 11th January 2023 with the Petitioner and thereby allowed the Petitioner-licensee to use and occupy the subject flat on Leave and License basis for a period of four months commencing from 10th January 2023. The Petitioner paid a security deposit of Rs.1,50,000/-. The parties agreed that the Petitioners shall pay Rs.53,000/- per month towards the compensation for the use and occupation of the subject flat on or before fifth day of the respective month.

3.2 The Respondent Nos. 4 and 5 alleged that, the Petitioner committed default in payment of the agreed monthly compensation. Therefore, the Respondent Nos. 4 and 5 addressed a notice on 10th April 2023 alleging that the Petitioner committed breach of the terms of the license and, thus, terminated the license.

3.3 The Respondent Nos. 4 and 5 filed an Application being No. 135 of 2023 before the Competent Authority seeking the eviction of the Petitioner from the subject flat and a direction to pay compensation at double the agreed rate of compensation, i.e., 1,06,000/- till the delivery of the clear and vacant possession of the subject flat.

3.4 The Petitioner appeared before the Competent Authority. At this juncture it is necessary to note that there is a serious controversy as to whether the Petitioner had sought leave to defend the Application as envisaged by the provisions contained in Section 43(4) of the Rent Act 1999. However, the Petitioner did file an Affidavit in Reply on 31st July 2023.

3.5 The Petitioner, *inter alia*, contended that the Application for eviction on the strength of the alleged termination of licence was not maintainable, before the expiry of the term of the license. The jurisdiction of the Competent Authority was also questioned on the count that the subject flat was used for commercial purpose and, therefore, the Competent Authority lacked subject matter jurisdiction.

3.6 By an order dated 30th August 2024, the Competent Authority allowed the Application observing, *inter alia*, that the Petitioner did not seek leave to defend the Application as envisaged by Section 43(4) of the Rent Act 1999, and the term of license had expired by the efflux of time, and, yet, the Petitioner had not delivered vacant possession of the subject flat to the Respondent Nos. 4 and 5. The Petitioner was thus directed to hand over clear, vacant and peaceful possession of the subject flat and also pay damages to the Respondent Nos.4 and 5 at the rate of Rs.1,06,000/- per month from 10th May 2023 till the delivery of the possession of the subject flat.

3.7 Being aggrieved, the Petitioner invoked the revisional jurisdiction of the Divisional Commissioner, Mumbai.

3.8 The Revisional Authority found no ground to interfere with the order passed by the Competent Authority as it was neither perverse nor illegal.

3.9 Being further aggrieved, the Petitioner has invoked the writ jurisdiction of this Court.

4. I have heard Mr. Aadil Parsurampurua, the learned Counsel for the Petitioner, Mr. Anil Mishra, the learned Counsel for the Respondent Nos. 4 and 5, and Mr. Hamid Mull, the learned AGP, for the Respondent-State.

5. As a controversy arose as regards the filing of the Application seeking leave to defend, the original record was called from the Competent Authority. With the assistance of the learned Counsel for the parties, I have perused the material on record in this Petition as well as the original record.

6. Mr. Aadil Parsurampurua, the learned Counsel for the Petitioner, initially premised his submissions on an alleged patent illegality in the impugned orders to the extent it has been recorded that, the Petitioner-licensee had not sought leave to defend the Application. Attention of the Court was invited to the copy of the Application (Exhibit “F”, page 49 of the Petition) which was allegedly filed by the Petitioner on 24th June

2023 seeking leave to defend the Application. Yet, Mr. Parsurampururia would urge, both the Competent Authority as well as the Revisional Authority have proceeded on an incorrect premise that the Petitioner had not sought leave to defend the Suit. Mr. Parsurampururia would urge that, such erroneous impression of the Authorities under the Rent Act 1999 caused grave prejudice to the Petitioner as the Authorities have not at all delved into the substantive defence raised by the Petitioner in the Affidavit in Reply, on the premise that the Petitioner had not sought leave to defend. The vitiation thus began, urged Mr. Parsurampururia.

7. Mr. Parsurampururia would urge even in the absence of a formal application for leave to defend, under Section 43(4) of the Rent Act, 1999, the Authorities could not have declined to consider the Affidavit in reply filed on behalf of the Petitioner as in the Affidavit in Reply the Petitioner had categorically sought leave to defend. What Section 43(4) of the Rent Act 1999 requires is filing of an Affidavit stating grounds on which licensee seeks to contest the Application for eviction. Sub-Section (4) of Section 43 does not necessarily mandate filing of a separate Application for leave to defend, was the thrust of the submission of Mr Parsurampururia.

8. On the merits of the matter, Mr. Parsurampururia would urge, the Competent Authority as well as the Revisional Authority have not at all delved into the ground raised by the Petitioner that the subject flat was

used for commercial purpose. In that view of the matter, according to Mr. Parsurampuriah, both the orders deserve to be quashed and set aside and the Application is required to be remitted for afresh determination taking into account the fact that the Petitioner had in fact filed an Application for leave to defend.

9. Mr. Mishra, the learned Counsel for the Defendant Nos. 4 and 5, stoutly countered the submissions on behalf of the Petitioner. Mr. Mishra urged with a degree of vehemence that, the Petitioner has approached the Revisional Authority as well as this Court with a patently false case that the Petitioner had filed an Application for leave to defend. According to Mr. Mishra, the Application for leave to defend; a purported copy of which has been annexed to the Petition at Exhibit “F” (page 49 of the Petition), was not at all filed before, and formed part of the record of, the Competent Authority. Yet submissions were brazenly advanced before this Court that, despite filing of the Application for leave to defend, the Authorities proceeded on an incorrect footing that the Petitioner had not sought such leave.

10. Mr. Mishra would further submit that, since the period of license has expired on 10th May 2023, the continued occupation of the subject flat by the Petitioner, despite having filed an undertaking to vacate the subject flat on or before 10th May 2024, is wholly unsustainable.

11. Even otherwise, there is no defence to the Application for eviction as the period of license has long expired. Therefore, the Petition deserves to be dismissed with exemplary costs, submitted Mr. Mishra.

12. I have given anxious consideration to the submissions canvassed across the bar and also carefully perused the material on record.

13. To start with, it is incontrovertible that the Leave and License Agreement was executed by and between Respondent Nos. 4 and 5 and the Petitioner, on 11th January 2023. There is not much controversy over the essential terms of the said Agreement. The term of license was four months. The agreed compensation was Rs.53,000/- per month. The compensation was to be paid on or before 5th day of the respective month. The controversy between the parties revolves around the transactions which form the prelude to the said Agreement dated 11th January 2023 and the purpose for which the subject flat was given on license.

14. Before adverting to the aforesaid contentious issues, the aspect as to whether the Petitioner had indeed filed an Application seeking leave to defend deserves to be determined as in view of the special procedure envisaged by Section 43 of the Rent Act 1999, a licensee is not entitled to contest the prayer for eviction unless he obtains the leave to defend. The provisions contained in Section 43 of the Rent Act 1999 envisage a

summary procedure for determination of the Application under Section 24 of the Rent Act 1999.

15. It is imperative to note that before the Revisional Authority as well as this Court, the order of the Competent Authority was assailed by taking specific grounds in the Revision Application and the instant Petition that, the Competent Authority recorded an incorrect finding that the Petitioner had not filed an Application for leave to defend and, thus, the order passed by the Competent Authority suffered from the vice of perversity.

16. As noted above, in the wake of the dispute between the parties over the very filing of the Application for leave to defend, the record and proceedings before the Authorities were called. The roznama of the proceedings before the Competent Authority makes it abundantly clear that the Application for leave to defend was not at all filed. On 25th July 2023, the Petitioner appeared through an Advocate and sought time to file leave to defend., and on the scheduled date, i.e., 31st July 2023, the Petitioner filed Affidavit in Reply. No Application for leave to defend was filed on that day or thereafter.

17. Mr. Parsurampuriah submitted that the filing of an Affidavit in Reply, which also contained a prayer that the Petitioner be granted leave to defend the Application, was a substantial compliance of the mandate contained in Section 43(4) of the Rent Act 1999, and, therefore, the

Authorities could not have proceeded on the premise that the Petitioner had not sought leave to defend.

18. The aforesaid submission oversimplifies the situation, which seriously reflects upon the conduct of the Petitioner. Had the Petitioner approached the Court with a case that, instead of filing a formal Application for leave to defend, the Petitioner had filed an Affidavit in Reply which in itself contained a prayer to grant leave to defend and, thus, the Authorities ought to have considered the said Affidavit for the purpose of grant of leave to defend, different considerations would have come into play.

19. However, the Petitioner not only approached the Revisional Court as well as this Court with a positive case that he had filed an application for leave to defend but also placed on record a copy of the said Application (Exhibit "F"); putting oath behind the assertion that the said document (Exhibit "F") was a copy of the Application for leave to defend filed before the Competent Authority. Such Application for leave to defend neither finds mention in the roznama of the proceedings nor forms part of the record of the proceedings before the Competent Authority.

20. It is also necessary to note that in this Petition, the Petitioner raised specific grounds of having filed the Application for leave to defend and that the Competent Authority erred in holding that such

Application was not filed (Paragraphs 5 and 7 and Grounds C (c), C(d) and C(e)).

21. Evidently, the Petitioner approached the Court with a false case to his knowledge. It was not a case of mere suppression of the fact. On the contrary, it was a case of positive misstatement. What exacerbates the situation is the fact that, despite Mr Mishra repetitively asserting that no such Application was filed, Mr. Parsurampuriah persisted with the submission that such Application, a copy of which is placed on record at Exhibit “F”, was indeed filed by the Petitioner. Even after the record and proceedings of the Authorities were called and it turned out that no such Application was filed, it is disconcerting to record that there was no hint of remorse on the part the applicant for having been made a deliberate false statement.

22. The legal position is well nigh settled. A party who approaches the Court with unclean hands and indulges in fraudulent acts and sharp practices to score a march over the adversary, does not deserve any relief. Over a period of time, the principle has ingrained in the justice dispensation system that such a litigant deserves to be thrown out of the Court, summarily.

23. A useful reference in this context can be made to the decision of the Supreme Court in the case of **S.P. Chengalvaraya Naidu (Dead) Vs Jagannath (Dead) by L.Rs. And Ors.**¹, wherein the approach to deal with

1 AIR 1994 SC 853.

the parties who come to the Court with a falsehood was delineated as under :

“7.....The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.”

24. In the case of **Dalip Singh V/s. State of Uttar Pradesh and Ors.**²

the Supreme Court expressed its anguish, in the following words :

“1. For many centuries, Indian society cherished two basic values of life i.e., ‘Satya’ (truth) and ‘Ahimsa’ (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of justice delivery system which was in vogue in pre-independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-independence period has seen drastic changes in our value system. The materialism has over-shadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.

2. In last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.”

25. On this count alone, the Petition deserves to be dismissed.

26. Nonetheless, this Court considers it appropriate to briefly delve into the sustainability of the impugned order. It was brought on record that prior to the Agreement in question, there were two Leave and License Agreements between the parties in respect of the very subject flat. The first Agreement was executed on 5th May 2021 for a term of 11 months, commencing from 10th May 2021. The second was executed on 15th June 2022 for a term of 9 months commencing from 10th April 2022 to 9th January 2023. The second Agreement was followed by Agreement in question commencing from 10th January 2023 to 9th May 2023.

27. The fact that in the Application before the Competent Authority there was no reference to the prior Agreements does not detract materially from the case of the Respondent Nos 4 and 5 as the principal defence of the Petitioner was that the subject flat was used for commercial purpose. The character of agreement or the jural relationship between the parties was not contested. The prior two

Agreements as also the Agreement in question categorically record that the subject flat was used for residential purpose and it was given to the Petitioner for residential use only. There was a covenant not to use the subject flat for any other purpose.

28. The endeavour of the Petitioner to take the matter out of the jurisdiction of the Competent Authority by contending that, to the knowledge of the Respondent Nos. 4 and 5, the subject flat was used for commercial purpose has to surmount an insuperable impediment of the express terms of the grant under the Leave and License Agreement, namely, the subject flat was to be used for residential purpose only. Moreover, in view of the provisions contained in Explanation (b) to Section 24, an Agreement for License in writing is conclusive evidence of the facts stated thereunder. The conclusive presumption thus operates qua the user of the premises as well.

29. Though an endeavour was made to contend that the licensor had no authority to terminate the license, in the context of the subsequent developments, the said issue pales in significance. The Revisional Authority was justified in recording a finding that the Competent Authority was in error in holding that the Leave and License Agreement did not contain a termination clause. In fact, under Clause 11 of the Leave and License Agreement, the licensor was entitled to seek

possession of the licensed premises in the event of breach on the part of the licensee of any of the terms and conditions of the license Agreement.

30. In any event, on the day the Respondent Nos. 4 and 5 filed the Application before the Competent Authority, the term of license had already expired. The Petitioner has no right to hold on to the subject flat after the expiry of the term of license.

31. In the aforesaid view of the matter, the order of eviction as well as the direction to pay the compensation at double the agreed rate, are wholly justified. Thus, no interference is warranted with the impugned order in exercise of supervisory jurisdiction.

32. Since the Petitioner made an attempt to mislead the Revisional Authority and this Court by making a deliberate false statement that he had filed Application seeking leave to defend and also placed on record a copy thereof (Exhibit "F"), which does not form part of the record of the Competent Authority, while refraining from taking any action for such deliberate false statement, this Court considers it appropriate to impose costs on the Petitioner.

33. Hence, the following order:

: O R D E R :

- (i) The Petition stands dismissed with costs of Rs.50,000/- to be paid by the Petitioner to the Maharashtra

State Legal Services Authority within a period of four weeks
from today.

(ii) Rule discharged.

[N. J. JAMADAR, J.]