

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13166 OF 2024

WITH

INTERIM APPLICATION NO. 13053 OF 2024

Mayur Nitin Nagonkar

..Petitioner

Age-35 years, Occupation -Service

Indian Inhabitant, residing at,

Flat No. 201/11-B, Harmony

Cooperative Housing Society Limited,

Shailendra Nagar, Dahisar East,

Mumbai – 400 068.

Email: adv.amittungare@gmail.com

Versus

1. Additional Commissioner, Kokan Division,
having its address at,
15, Madame Cama Road, Mantralaya,
Fort, Mumbai, Maharashtra 400 032.

...Respondents

2. The Competent Authority (Rent Act)
Kokan Division,
Having address at 5th floor,
Gruh Nirman Bhavan,
Bandra East, Mumbai 400 051.

3. Nisha Ramakant More,
Age-61, Occupation retired,
Indian Inhabitant, having permanent
Address at Flat No. A-507, 5th floor,
Om Shiv Sai Cooperative Housing Society
Limited, Joglekarwadi, Sion East,
Mumbai 400 022.

And

Flat No. 101, 1st floor, A Wing Mohan Mansion
Cooperative Housing Society Limited,
Gulmohar Road, Off Eastern Express Highway,
Sion, Chunabhatti,

ARUN
RAMCHANDRA
SANKPAL

Digitally signed by
ARUN
RAMCHANDRA
SANKPAL
Date: 2025.09.03
20:57:50 +0530

Mumbai 400 032.
Email ID: Not Available
Mobile Number: Not available.

4. Monish Builder,
Registered Office at Monish Builders,
7-B Cenced Apartment, 318-Union Park,
Khar (West), Mumbai 400 052.
And
Sales Office at Ground Floor, Mohan Mansion,
Gulmohar Lane, Sion-Chunabhatti (E),
Mumbai 400 022.

5. Kishor Advani
Authorized Representative of Respondent No.4
Age-adult, Occupation-Business,
5th Floor, Vasu Bhavan, 11th Road,
Opposite Hinduja Helathcare,
Khar (W), Mumbai – 400 052.

6. Ramesh G Gangawani
The Partner of Respondent No.4,
Age-adult, Occupation-Business,
Regd. Office: Monish Builders,
7-B, Cenced Apartment, 318 Union Park,
Khar (W), Mumbai 400 052.

7. Baburao B Patil
The Partner of Respondent No.4
Age-adult, Occupation-Business,
Regd Office: 88 Nirankar Mandir Marg
Juhu Nagar, Sector 12, Vashi,
Navi Mumbai 400 703.

8. Tejaswani A Patil,
The partner of Respondent No.4,
Age-adult, Occupation-Business,
Regd Office: 88 Nirankar Mandir Marg,
Juhu Nagar, Sector 12, Vashi,
Navi Mumbai 400 703.

9. Jyotindrakumar Poonamchand Shah,
The Partner of Respondent No.4
Age-adult, Occupation-Business,

R/o D-1, S-1, New Alkanand Society,
M.G. Complex, Sector-14,
Vashi, Navi Mumbai 700 703.

Mr. Saurish Shetye, with Aishwarya Tambe, i/b Amit Tungare, for the
Petitioner.

Mr. Hamid Mulla, AGP, for Respondent Nos. 1 and 2.

Mr. Bharat G. Thorat, for Respondent No.3.

Mr. Ganesh Singh, for Respondent Nos. 4 and 5.

CORAM: N. J. JAMADAR, J.

RESERVED ON : 4th JULY 2025.

PRONOUNCED ON : 3rd SEPTEMBER 2025

JUDGMENT:

1. Rule. Rule made returnable forthwith, and with the consent of the learned Counsel for the parties, heard finally.

2. By this Petition under Articles 226 and 227 of the Constitution of India, the Petitioner takes exception to a judgment and order dated 10th August 2022 passed by the Additional Commissioner, Konkan Division, in Revision Application No. 174 of 2022 whereby the said Revision Application preferred by the Petitioner came to be dismissed by affirming an order passed by the Competent Authority under Section 24 of the Maharashtra Rent Control Act 1999 (“the Rent Act 1999”).

3. The background facts leading to this Petition can be summarised as under:

3.1 The Petitioner claimed to have booked two flats, i.e. Flat Nos. 906 and 907 in a project “Mohan Mansion”, then being developed by M/s

Monish Builders, of which Kishor Advani-Respondent No. 5 was the authorized representative. The Petitioner had parted with consideration. An Agreement for Sale came to be executed in respect of Flat No. 906 on 23rd July 2015. An allotment letter was issued in respect of Flat No. 907. However, the Respondent No.5 failed to deliver the possession of Flat No. 906, as agreed, and execute an Agreement for Sale in respect of Flat No. 907.

3.2 On account of the failure on the part of the Respondent No. 5, the Petitioner started to demand the refund of the part consideration paid by the Petitioner. At that stage, the Petitioner asserts, the Respondent No. 5 introduced the Petitioner to Nisha More (R3) and her husband. The couple agreed to give their Flat i.e., Flat No. 101, A Wing, in the same project to the Petitioner on the condition that the Respondent No. 5 would pay the licence fee to Respondent No.3. Accordingly, a Leave and Licence Agreement came to be executed on 10th August 2016. The term of licence was two years. The licence fee was fixed as Rs.25,000/- per month security deposit of Rs.50,0000/- was also paid.

3.3 The Petitioner asserts, the Leave and Licence Agreement came to be renewed on multiple occasions. The last Agreement was executed on 20th February 2020 on the same terms and conditions, for the term commencing from 15th April 2020 to 14th March 2021.

3.4 The Petitioner claimed that the licence fee was paid by the Petitioner to Respondent No.3 through Kishor Advani (R5), yet, the Respondent No. 3 falsely claimed that the Petitioner was in arrears of licence fee from the month of September 2020, and addressed a notice dated 7th December 2020, thereby terminating the licence and calling upon the Petitioner to hand over vacant and peaceful possession of the subject premises.

3.5 It is the claim of the Petitioner that the Respondent No. 5 had undertaken to pay the licence fee and had, in fact, paid the licence fee to the Respondent No.3. The latter was aware of the nature of the transaction between the parties and had agreed to give the premises on licence on the condition that the licence fee would be paid by the Respondent No.5. Yet, the Respondent No.3 raised the dispute.

3.6 Eventually, the Respondent No.3 filed an Application under Section 24 of the Maharashtra Rent Act 1999, being Eviction Application No. 106 of 2021. The Petitioner filed an Application for leave to defend.

3.7 By an order dated 23rd February 2022, the Competent Authority declined to grant the leave to defend. On the very day, by a separate judgment and order, the Competent Authority allowed the said Eviction Application and directed the Petitioner to hand over vacant and peaceful possession of subject premises and also directed the Petitioner to pay the arrears of licence fee and make payment of the licence fee at double the

agreed rate of licence fee from 15th March 2021 till the delivery of possession of the subject premises to the Respondent No.3, as damages.

3.8 Being aggrieved, the Petitioner preferred a Revision before the Additional Commissioner, Kokan Revenue Division, under Section 44 of the Rent Act 1999. By the impugned order, the Revisional Authority dismissed the Revision Application concurring with the view of the Competent Authority that the Petitioner was in the occupation of the subject premises, after the expiry of the term of licence, and was, therefore, liable to be evicted from the subject premises.

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

4. I have heard Mr Saurish Shetye, the learned Counsel for the Petitioner, and Mr. Bharat Thorat, the learned Counsel for Respondent No. 3, Mr. Hamid Mulla, the learned AGP, for Respondent Nos. 1 and 2 and Mr. Ganesh Singh, the learned Counsel for Respondent Nos. 4 and 5. With the assistance of the learned Counsel for the parties, I also perused the material on record.

5. Mr. Shetye, the learned Counsel for the Petitioner, submitted that the Competent Authority as well as the Revisional Authority were in error in not appreciating the attendant circumstances of the case in a correct perspective. The Authorities have proceeded on the sole premise that there were registered Leave and Licence Agreements between the

Petitioner and Respondent No.3 and thus misdirected themselves in not appreciating the circumstances in which the said Agreements came to be executed, and the consent of the Respondent No.3 for such arrangement.

6. Mr. Shetye urged that, in the circumstances of the case, the Respondent No. 5 was, in a sense, landlord of the subject premises. An endeavour was made to place reliance on documents to show the understanding among the parties as regards the real nature of the transaction, and the payment of licence fee by the Respondent No. 5 to Respondent No.3. In the totality of circumstance, according to Mr. Shetye, the transaction in question was not that of a licence, pure and simple.

7. Mr. Shetye would urge that the possession of the Petitioner over the subject premises is referable to the interest of the Petitioner in the subject premises, which emanated from the transaction between the Petitioner and the Respondent No. 5. Brushing aside the overwhelming material, the Competent Authority could not have passed an order of eviction, appreciating the case in an over simplistic manner, was the thrust of the submission of Mr. Shetye.

8. To buttress these submissions, Mr. Shetye placed reliance on the judgments of this Court in the case of **Snehal Shailesh Borana Vs Additional Divisional Commissioner and Ors,**¹ **Parineeta Chaudhari &**

1 2024 SCC OnLine Bom 2646.

Ors Vs Mohammed Hussain A. Furniturewalla² and Jogani And Sachdev Developments Vs Lawrence D'Souza.³

9. In opposition to this, Mr. Bharat Thorat, the learned Counsel for the Respondent No. 3 supported the impugned order. It was urged that in the face of the successive registered Leave and Licence Agreements, the Petitioner cannot be permitted to set up a different transaction between the parties. At any rate, the Respondent No. 3 had no concern with the alleged transaction between the Petitioner and Respondent Nos. 4 and 5.

10. If at all there was any dispute between the Petitioner and Respondent Nos. 4 and 5, the Petitioner could have invoked the remedies qua Respondent Nos. 4 and 5. Thus, the Petitioner has no semblance of right to continue to occupy the subject premises after the expiry of term of licence. Therefore, the Competent Authority as well as the Revisional Authority were fully justified in negating an untenable and imaginary claim of the Petitioner.

11. At the outset, it is necessary to note that there is no controversy over the execution of the Leave and Licence Agreement dated 10th August, 2016, whereunder the subject premises was given on leave and licence to the Petitioner for a term of 22 months commencing from 15th August 2016. Nor there is any controversy over the renewal of the

2 2008 SCC OnLine Bom 858.

3 2006 (2) Mh.L.J. 369.

licence by executing fresh Agreements. The last renewal was under an Agreement dated 20th February 2020, whereby the licence was renewed from 15th April 2020 to 14th March 2021. The execution and contents of these Leave and Licence Agreements have not been put in contest.

12. Evidently, an endeavour was made by the Petitioner to put in contest the character of the documents and not their contents. The tenor of the defence of the Petitioner was that the subject premises was given to the Petitioner as and by way of alternate accommodation for the failure on the part of the Respondent Nos. 4 and 5, to deliver the possession of the flats booked by the Petitioner in the project, Mohan Mansion. And the Respondent No. 5 had agreed to pay the licence fee.

13. The question that wrenches to the fore is, whether in the face of the Agreements for leave and licence, which incorporate the essential terms of licence, the Petitioner could have been permitted to urge such a ground and thereby protect the possession over the subject premises. Section 24 of the Maharashtra Rent Act 1999 reads as under:

“24. Landlord entitled to recover possession of premises given on licence on expiry

(1) Notwithstanding anything contained in this Act, a licensee, in possession or occupation of premises given to him on license for residence shall deliver possession of such premises to the landlord on expiry of the period of licence; and on the failure of the licensee to so deliver the possession of the licensed premises, a landlord shall be

entitled to recover possession of such premises from a licensee, on the expiry of the period of licence, by making an application to the Competent Authority, and the Competent Authority, on being satisfied that the period of licence has expired, shall pass an order for eviction of a licensee.

(2) Any licensee who does not deliver possession of the premises to the landlord on expiry of the period of licence and continues to be in possession of the licensed premises till he is dispossessed by the Competent Authority shall be liable to pay damages at double the rate of the licence fee or charge of the premises fixed under the agreement of licence.

(3) The Competent Authority shall not entertain any claim of whatever nature from any other person who is not a licensee according to the agreement of licence.

Explanation.—For the purposes of this section,—

(a) the expression “landlord” includes a successor-in-interest who becomes the landlord of the premises as a result of death of such landlord; but does not include a tenant or a sub-tenant who has given premises on license;

(b) an agreement of licence in writing shall be conclusive evidence of the fact stated therein.”

14. On a plain reading, it becomes abundantly clear that the Competent Authority is a creature of the statute and has a limited jurisdiction. The remit of the jurisdiction of the Competent Authority is

confined to determine the claim for eviction of a licensee filed by a licensor-landlord. Sub Section (3) expressly bars the Competent Authority from entertaining a claim of any third party who is not a licensee. To arrive at the satisfaction that the period of licence has expired, the Competent Authority can embark upon an enquiry as to:

- i) Whether the landlord/licensor has given the subject premises on licence for residential purpose?
- ii) Whether there is a leave and licence agreement? Is it registered?
- iii) Whether the term of licence has expired?
- iv) Whether the licensee has delivered the possession of the licensed premises, after the expiry of term of licence?

15. Explanation (b) to Section 24 incorporates a presumption to the effect that an agreement of licence in writing shall be conclusive evidence of the facts stated therein.

16. Moreover, the provisions contained Act, 1999 envisage a summary procedure for the determination of the applications filed under Section 24 of the Act, 1999. Neither the question of title nor existence of rights emanating from a different jural relationship asserted by the licensee, in subject premises, can be legitimately inquired into in such summary proceeding.

17. In the case of **Surendra B. Agarwal and anr. vs. AMIL**

Merchandising Pvt. Ltd.,⁴ a learned Single Judge of this Court considered the nature and import of the provisions contained under Section 24 of the Act, 1999 and the nature of the jurisdiction exercised by the Competent Authority. It was, inter alia, held that the pendency of the suit relating to the title of the licensor or for a declaration instituted by the licensee claiming certain rights in the subject premises can not preclude the Competent Authority from determining the application for eviction under Section 24 of Act.

18. Observations in Paras 10 to 12 of the said judgment read as under:

“10. Thus, the special provision has been made under the said Act for evicting the licencees of premises given on licence for residence.

A special procedure laid down under Chapter VIII governs the application made under Section 24 of the said Act. The said Act contemplates a summary disposal of the applications. By the very nature of the proceedings as reflected from the aforesaid statutory provisions, the jurisdiction of Competent Authority is very limited. It can decide a dispute between a landlord (licensor) and the licensee.

It is obvious that considering the summary nature of the proceedings, issue of title to the disputed premises can never be decided in such proceedings. The sub-section 1 of Section 24 starts with non-obstante clause. Moreover Section 39 of the said Act gives overriding effect to the provisions of Chapter VIII. Therefore, pendency of a suit governed by Section 33 of the said Act or a suit on title cannot prevent the competent authority from deciding an application for eviction. There is no statutory power vesting the Competent Authority to stay the proceedings of the application under Section 24 of the said Act on the ground of pendency of a civil suit relating to the property.

11. All that is required to be considered by the Competent

⁴ 2010 (1) MhLJ 223.

Authority is whether the landlord has given the premises on licence for residence and whether on expiry of period of licence the licensee has not delivered the possession of the premises subject matter of licence. Sub-section 3 of Section 24 of the said Act specifically prevents the Competent Authority from considering a claim of any stranger. The intention of legislature of making an Agreement of Licence in writing as a conclusive evidence of the facts stated therein cannot be altogether ignored.

12. Hence, once application under Section 24 of the said Act is filed by the licensor, the Competent Authority has to decide the said application in accordance with law. The Competent Authority is not really concerned with the title of the licensor. All that is required to be examined is whether the applicant is a licensor and whether the opponent is the licensee and whether there was a Leave and Licence Agreement for residential use of the suit premises. In a case where licensee is claiming some other rights in relation to the premises in dispute, adjudication of the said rights cannot be made by the Competent Authority. Therefore, if a suit relating to the title of the licensor is pending or if a suit for declaration filed by the licensee claiming declaration of rights is pending, that is no ground to detain the hearing of application under Section 24 of the said Act. The pendency of suits in the Civil Court or other Competent Court relating to the premises in dispute does not affect the jurisdiction of the Competent Authority to decide the application. While deciding the application under Section 24 of the said Act the Competent Authority cannot decide the issue of title."

(emphasis supplied)

19. The aforesaid being the position in law, the submission on behalf of the petitioners that the Competent Authority ought to have embarked upon an enquiry as regards the real nature of the jural relationship between the parties in the light of the documents and material brought on record by the petitioner, does not merit consideration.

20. What is of critical salience is the fact that, after the expiry of the first agreement, the parties entered into successive leave and licence agreements for further terms. In the face of these registered leave and licence agreements, the presumption contained in the Explanation (b) to Section 24 operated with full force and rigour. In a sense, the nature of jural relationship formed by the first agreement was reinforced by the successive agreements. Therefore, the impugned orders which proceed on the premise of jural relationship of licensor and licensee, evidenced by the multiple leave and licence agreements, cannot be faulted at.

21. The Petitioner continued to be in the occupation of the subject premises since 2016 till 2021 in his capacity as the licensee, under the said Agreements. The grounds sought to be urged by the Petitioner to continue to occupy the subject premises stand on a weaker foundation. Pertinently, the Petitioner does not claim that there was a different jural relationship between the Petitioner and Respondent No. 3. In fact, without disputing the jural relationship of licensor and licensee, the Petitioner contended that the Petitioner was put in possession of the subject premises by Respondent Nos. 4 and 5 as the later committed default in their contractual obligations. Evidently, neither the Respondent No. 3 is a party to the said transaction between the Petitioner and Respondent Nos. 4 and 5. Nor the Respondent No. 5 entered the frame of licence. The Respondent No.3 does not seem to

have any concern with the alleged transaction between the Petitioner and Respondent Nos. 4 and 5.

22. The endeavor of Mr Shetye to urge that the documents on record, especially the exchange of messages and credit of the amount to the account of Respondent No.3 from the account of the Respondent No. 5, do indicate the tacit arrangement between the parties, does not merit countenance. Even if it is assumed that there was credit of some amount by the Respondent No. 5 to the account of Respondent No.3, it does not necessarily imply that the said amount was towards the licence fee which was to be paid by the Petitioner to Respondent No.3. At any rate, such payment does not dilute the nature of jural relationship formed by and between the Petitioner and Respondent No.3 under the said Leave and Licence Agreements.

23. The decision in the case of **Snehal Borana (Supra)**, on which reliance was placed by Mr. Shetye, does not advance the cause of the Petitioner as in that case, after the expiry of the licence, the Petitioner therein was found to be in the occupation of the premises on the strength of an Agreement for Sale executed by the erstwhile licensor. Clearly, the jural relationship between the parties in that case had changed pursuant to an Agreement for Sale executed by the erstwhile licensor, and the possession of the Petitioner therein over the premises became referable to the Agreement for Sale under the licence.

24. The decisions in the cases of **Parineeta Chaudhari (Supra)** and **Jogani and Sachdev Developments (Supra)** have no application at all to the facts of the case at hand.

25. The conspectus of the aforesaid consideration is that the Competent Authority was wholly justified in returning the finding that the Petitioner continued to occupy the subject premises after the expiry of the term of licence without any semblance of right. In the circumstances of the case, and having regard to the nature of defence taken by the Petitioner, the direction for the payment of compensation double the agreed licenced fee appeared to be fully justifiable. Instead of proceeding against the Respondent Nos. 4 and 5 for enforcement of their contractual obligations, the Petitioner has unjustifiably withheld the subject premises. Therefore, the Revisional Authority rightly declined to interfere with the order passed by the Competent Authority.

26. Reulstantly, in exercise of the supervisory writ jurisdiction, this court does not find any justification to interfere with the impugned order

27. Hence the following order:

: O R D E R :

- (i) The Petition stands dismissed with costs.
- (ii) Rule discharged.

(iii) In view of the disposal of the Petition, Interim
Application No. 13053 of 2024 also stands disposed.

[N. J. JAMADAR, J.]