

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2844 OF 2024

Umesh Jakhubai Nandu

...Petitioner

Versus

Rajesh Mahadeo Sangar & Ors.

...Respondents

Mr. S. G. Karandikar a/w. Mr. Jayesh Joshi, for the Petitioner.

Mr. Namitkumar S. Pansare i/b. Mr. Nikhil Pawar, for the Respondent No.1.

Mr. B. B. Dahiphale, AGP, for the Respondent No.4-State.

CORAM: MADHAV J. JAMDAR, J.

DATED: 16 FEBRUARY 2026

JUDGMENT:-

1. Heard Mr. Karandikar, learned Counsel appearing for the Petitioner, Mr. Pansare, learned Counsel appearing for the Respondent No.1 and Mr. Dahiphale, learned AGP appearing for the Respondent No.4-State.

2. By the present Writ Petition filed under Article 227 of the Constitution of India, the challenge is to the legality and validity of the order dated 5th February 2024 passed by the learned Additional Divisional Commissioner, Konkan Division, Mumbai in Revision No.489 of 2023. By the impugned order, the said Revision

Application has been allowed and eviction order dated 17th May 2023 passed by the Competent Authority in Case No.172 of 2022 has been set aside and the matter has been remanded back to the Competent Authority. The Operative Part of the order which has been set aside by the Additional Divisional Commissioner, Konkan Division, Mumbai of the Competent Authority dated 17th May 2023, reads as under:

“ORDER

- 1. The application is allowed.*
- 2. The respondent is hereby directed to handover vacant and peaceful Possession of application premises “Block No.2/B-002, Sarvoday Mangal Building, Kanchangaon, Khambalpada Road, Thakurli (East)” to the applicant within 30 days from the date of this order.*
- 3. The respondent is directed to pay damages to applicant at the rate of **Rs.20,000/- Per month (10,000x2=20,000)** from 16.08.2021 to till Handover the vacant possession of application premises.*
- 4. The applicant is at liberty to appropriate security deposit if any.”*

3. The Competent Authority while passing the order dated 17th May 2023 has taken into consideration that there is written Leave and License Agreement and further it has been observed that the contents of the same are conclusive as per Explanation (b) to Section 24 of the Maharashtra Rent Control Act, 1999. The Additional Divisional Commissioner, Konkan Division, Mumbai while setting aside the said order dated 17th May 2023 has *inter alia* observed that the Leave and License Agreement executed by the present Petitioner inter alia in favour of the Respondent No.1 is by misrepresentation of fact that he is owner of the suit premises and therefore, the said Leave and License Agreement became null and void and not maintainable. It has been further observed that the Petitioner-Umesh Jakhubai Nandu has agreed to sale the premises in question for sum of Rs.24,50,000/- to the Respondent No.1-Rajesh Mahadeo Sangar. It has been further observed that the issues raised by Respondent No.1 are triable issues which require trial to lead evidences to prove the ownership of the Petitioner.

4. To appreciate whether the reasons given by the Additional Divisional Commissioner, Konkan Division, Mumbai are legal and

proper, it is necessary to set out Section 24 of the *Maharashtra Rent Control Act, 1999* (“**MRC Act**”), which 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.”

(Emphasis added)

5. Thus, the Explanation (b) to Section 24 of the MRC Act specifically provides that an agreement of licence in writing shall be conclusive evidence of the fact stated therein.

6. It is required to be noted that as per the settled legal position leave and licence agreement, is conclusive evidence of the facts stated therein and no other evidence can be led inconsistent with the said facts by either of the parties and is conclusive between the parties of the facts stated therein. This Court in the case of ***Ramesh Ramrao Hate v. Parvez B. Bhesania***¹, held in Paragraph No.9 as under :-

“9. Once the legislature by explanation (b) of Section 13-A(2) has provided that a written agreement of licence shall be conclusive evidence of the facts stated therein, it provided a special rule of evidence for the purpose of proceedings under section 13-A(2) of the Bombay Rent Act. The intention of the legislature was to give finality

1 1997(1) Mah LJ 295

to the existence of a fact occurring in the written agreement of leave and licence. In other words legislature intended to shut out any other evidence which would detract from the conclusiveness of that evidence. The object of expression 'conclusive evidence of fact stated therein' is aimed to give finality to the establishment of the existence of the fact or facts stated in the written leave and licence agreement from the proof of another. The argument of learned counsel for the Petitioner that explanation (b) only makes the written agreement of licence conclusive evidence as regards the licensor and not against the licensee is very difficult to be appreciated. Once it is provided by the legislature that an agreement of licence in writing shall be conclusive evidence of the facts stated therein, it prohibits from leading any other evidence which may affect the conclusiveness of that evidence. The law laid down by the Apex Court in Smt. Somawanti case (supra) is clear answer to the contention of the learned counsel for the Petitioner wherein the Apex Court has held that once the law says that certain evidence is conclusive it shuts out any other evidence which would detract from the conclusiveness of that evidence. Not only that when a certain evidence is made conclusive evidence, it prohibits any other evidence to be led which may detract from the conclusiveness of that evidence, but also the court has no option to hold the existence of the fact otherwise when such evidence is made conclusive. Once an execution of the agreement of leave and licence is not disputed before the Competent Authority in an application under section 13-A(2) based on such leave and licence agreement, it is conclusive evidence of the facts stated therein and no other evidence can be led inconsistent with the said facts by either of the parties and is conclusive between the parties of the facts stated therein. The Competent Authority has no option but to hold that the facts stated therein do exist. Same position holds good also in a case where the execution of written agreement of leave and licence is denied and the Competent Authority after recording evidence reaches the conclusion that execution

of such agreement for leave and licence has been proved by the licensor.”

(Emphasis added)

7. Although the above discussion is concerning Explanation (b) of Section 13-A(2) of the *Bombay Rents, Hotel and Lodging House Rates Control Act, 1947* the same is squarely applicable to Explanation (b) to Section 24 of the MRC Act, which is analogous provision.

8. In this particular case, execution of Leave and License Agreement is not denied. The Leave and License Agreement specifically records that the Petitioner is the owner of the property and the premises in question has been given on Leave and License basis on monthly compensation of Rs.10,000/-. It is correct that if the fraud is played, fraud vitiates everything. If fraud is established, Explanation (b) of Section 24 of MRC Act will not be applicable. However, it is required to note that although the Respondent No.1 has come with the case that there is fraud and the Petitioner is not the owner of the premises, however, the Respondent No.1 has also come with the contrary contentions that the Petitioner has agreed to sale the premises to the Respondent

No.1 for a sum of Rs.24,50,000/-. Thus, it is clear that there is no basis in the contention that the Petitioner is not owner of the premises, at least for the purpose of exercising jurisdiction under Section 24 of the MRC Act is concerned. Admittedly, in the leave and license agreement it is specifically stated that the Petitioner is the owner of the suit premises. Thus, the said agreement of leave and license in writing is conclusive evidence even of the said fact. Thus, the impugned Order passed by the Additional Divisional Commissioner, Konkan Division, Mumbai is totally illegal and deserves to be quashed and set aside.

9. Mr. Pansare, learned Counsel appearing for Respondent No.1 submits that the Respondent No.1 will file a suit seeking appropriate reliefs.

10. Accordingly, by consent of the parties, the following order is passed:

ORDER

(a) The order dated 5th February 2024 passed by the Additional Divisional Commissioner, Konkan Division,

Mumbai in Revision filed under Section 44 of the Maharashtra Rent Control Act, 1999 being Revision No.489 of 2023 is quashed and set aside.

- (b) Resultantly, the order dated 17th May 2023 passed by the Competent Authority, Rent Control Act, Konkan Division, Mumbai in Eviction Application No.172 of 2022 is restored.
- (c) However, at the request of the Petitioner, time to vacate the suit premises is granted till 30th April 2026.
- (d) It is made very clear that if the Respondent No.1 fails to obtain any order from the Civil Court protecting his possession, then he shall handover the vacant and peaceful possession of the suit premises to the Petitioner on or before 30th April 2026. The Respondent No.1 to file such undertaking within a period of two weeks from uploading of this Order.

- (e) It is further made very clear that if the Respondent No.1 fails to handover the possession, in case no interim order is passed by the Civil Court on or before 30th April 2026 protecting the possession of the Respondent No.1, then the Court Receiver, High Court, Bombay shall stand appointed immediately on or after 30th April 2026.
- (f) In that event, the Court Receiver, High Court, Bombay shall take the immediate possession and handover the same to the Petitioner. If necessary, the local Police shall give Police protection to the Court Receiver.
- (g) Initial charges of the Court Receiver, High Court, Bombay be paid by the Petitioner, to be recovered from the Respondent No.1.

11. Accordingly, the Writ Petition is disposed of in above terms with no order as to costs.

12. It is made very clear that the observations made in this order are made only for the purpose of examining legality and validity of the impugned order dated 5th February 2024 passed by the Additional Divisional Commissioner, Konkan Division, Mumbai in Revision No.489 of 2023.

13. The contentions to be raised by both the parties as far as the said civil proceedings are concerned, are expressly kept open.

[MADHAV J. JAMDAR, J.]

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