

Presented on :	23/01/2017
Registered on :	23/01/2017
Decided On :	24/10/2024
Duration :	07Y09M01D

IN THE COURT OF COMPETENT AUTHORITY RENT
CONTROL ACT, PUNE DIVISION, AT-PUNE,

(Presided over by C.P.Shelke)

APP. NO. 08 OF 2017

Exh.126

Shri. Vislesh Kumar Maurya
Age : 37 years, Occ : IT Professional,
R/o : Flat No. 709, SMR Vinay Technopolis,
Adjascent to Google, Korthaguda,
Hyderabad - 500084

..... Applicant

VERSUS

1) Shri. Pramod Bharat Sarawale
Age : 35 years, Occ :Business,
2) Smt. Punam Pramod Sarawale
Age : 33 years, Occ :Housewife,
Both R/o : Flat No. W-702, Topaz Park,
Park Street, Wakad,
Pune – 411057

..... Respondents

Application Under Section 24 of the Maharashtra Rent Control Act, 1999

Appearances

Smt. Anuya Sagare KulkarniAdvocate for the applicant.

Shri. Deepak L. SalunkeAdvocate for the respondents.

J U D G M E N T

(Delivered on 24th October, 2024)

1. This is an application filed under Section 24 of Maharashtra rent control Act 1999 (Herein after referred as MRC Act) for seeking Eviction and damages.

2. The facts as stated by the applicant in brief are as under:

The Applicant submitted that he is the owner of flat No. W-702, seventh floor, Topaz park, Survey No. 225/1, 225/2, 224/2, and 224/1, Park Street, Wakad, Pune- 411047. (Herein-after above said described property will be called as 'licensed premises'.)

3. The Applicant further states that he let the licensed premises to the respondents for residence on the basis of leave and license agreement for the period of 11 months commencing from 01/01/2016 to 30/11/2016 and agreed license fee was Rs. 20,000/- per month which was to be paid on or before 5th day of every month. The respondents did not pay license fees for the month of November 2016. Therefore, on 15/11/2016 he issued notice to the respondents. The agreement of leave and license expired on 30/11/2016. The respondents have started to avoid the phone calls of the applicant. In spite of expiry of period of license and receipt of the notice, the respondents did not vacate licensed premises and have not been paid license fee. Hence, the applicant filed this application for the arrears of license fees, damages and recovery of possession of licensed premises.

4. Respondents appeared and filed leave to defend application (Exh.13) along with affidavit (Exh. 14). Same was allowed on 22/02/2018 and the respondents were permitted to file their written statement. Respondents filed their written statement (Exh. 15) and submitted that in the month of October 2014 they were in need of residential premises. They met the applicant through an estate agent. It was agreed between them that licensed premises will be let on the basis of rent for the 5 years. Accordingly, the leave and license agreement was executed in the month of January 2015. After the expiry of the said leave and license agreement, there was no agreement till 17/02/2016. The respondents issued 6 cheques bearing numbers 062895 to 062900 of Rs. 19,800/- per month each for the period 10/01/2016 to 05/06/2016 to the applicant. The cheques were encashed by the applicant. On 12/01/2016, the respondents sent notice to the applicant by stating that they have become tenant. The relationship between the applicant and respondents is as tenant and landlord. The licensed premise was not fully furnished, therefore, they asked the applicant to renovate and furnish the licensed premises. After obtaining oral consent of the applicant, the respondents renovated licensed premises and incurred expenses of Rs. 10,00,000/- for said work. The applicant agreed to pay the expenses in the future. They are having all the receipts of expenditures. They are residing in the licensed premises as a tenant and have paid the rent till today through cheques and cash. The maintenance receipt given by the society to the respondents, it has also mentioned their name as tenant in receipt. The applicant informed the respondents that they are going to execute formal rental agreement for the 5 years. The

respondents do not have the knowledge of English language. Knowing such fact, the applicant drafted the leave and license agreement dated 17/02/2016 in English language and by misguiding obtained their signatures on said agreement. They were paying rent as the tenant.

5. On 02/10/2016, the applicant asked to the respondents to handover the vacant possession of the licensed premises. In response, the respondents told him that licensed premises is given on the rental basis for five years. Thereafter the applicant informed them that the agreement dated 17/02/2016 is of leave and license and not of rental basis. The respondents sent notice dated 10/10/2016 to the applicant along with 11 cheques Nos. 086102 of Rs. 20,000/- , 086103, 086109 to 086117 of Rs. 22,000/- each drawn of Saraswat Bank, Branch Baner with increased rent of 10%. On 13/11/2016, the applicant again sent notice by demanding the vacant possession. Then, the respondents informed the applicant on the telephone that they have paid the rent in advance by sending the notice dated 10/10/2016 and alleged demand of the possession is illegal. Thereafter, the applicant forceably tried to take possession. Therefore, the respondents filed suit for declaration and injunction against the applicant before the Hon'ble Small Cause Court, Pune. They prayed to reject the application and sought expenditure of Rs. 10,00,000/- with interest.

6. Heard Ld. Advocate for the applicant and the respondents. Perused the written notes of arguments (Exh.76 and Exh.125) filed by the applicant and the respondent respectively. On 02/11/2019, my Ld. Predecessor has framed issues. I have reproduced the same with reasons along with my findings thereon as under.

Sr. No.	Issues	Findings
1	Whether the applicant proves that there is registered agreement of leave and license dated 17/02/2016 for the period of 11 months i.e. 01/01/2016 to 30/11/2016 in favour of the respondents as licensee of the licensed premises?	Yes
2	Whether applicant proves that period of license of the licensed premises had expired?	Yes
3	Whether the applicant entitled to recover possession of the licensed premises from the respondents?	Yes
4	Whether the applicant entitled to recover double the license fees for an amount of Rs. 40,000/- (Rs. Forty Thousand only) per month as damages?	Yes
5	Whether the respondents prove that they made an expenses of Rs. 10,00,000/- (Rs. Ten Lakhs only) for renovation of the licensed premises	No

	and with the permission of the applicant subject to repay the said amount to the respondents by the applicant?	
6	What Order ?	The application is allowed.

REASONINGS

7. To prove the case, the applicant Shri. Vishlesh Kumar Maurya has filed examination in chief affidavit (Exh.31). The applicant has produced registered leave and license agreement dated 17/02/2016 (Exh.33), notarized copy of leave and license agreement dated 23/12/2014 (Exh.34), office copy of notice (Exh.35) dated 13/11/2016, RPAD acknowledgements (Exh.36 and Exh.37) and certified copy of Civil Suit No. 60/2017 (Exh.38). The applicant has filed evidence closed pursis (Exh.39, 44, 57).

8. On the contrary, respondent No. 1 Shri. Pramod Bharat Sarawale has filed examination in chief affidavit (Exh.66) and produced photocopy of his bank account statement (Exh.81) of Saraswat Bank, office copy of notice (Exh.82) dated 12/01/2016, copy of bill (Exh.83) of Arch Dream Designers, copy of bill (Exh.84) of Willtech Engineers Pvt. Ltd, Sale orders of Kamal Limited (Exh. 85 to Exh.87), NOC of society

(Exh.88), postal receipt (Exh.89), office copy of notice (Exh.90) dated 10/12/2016, photocopies of cheques (Exh. 91 to 101), the copy of police complaint (Exh. 102), postal receipt (Exh.103), office copy of notice (Exh.104) dated 10/10/2016, office copy of notice (Exh. 105) dated 12/01/2016 and printout of email (Exh.107) dated 23/01/2016. In spite of ample opportunities from 02/01/2019 till 06/05/2024, the respondents failed to lead any further evidence, therefore evidence of the respondents was closed by passing order below Exh. 114.

As to issue No. 1 and 2 collectively-

9. Undisputed that the applicant and his wife are the owners of the licensed premises. The applicant has deposed (Exh.31) that he and the respondents were entered into leave and license agreement for the period of 11 months which commenced from 01/01/2016 and ending on 30/11/2016. He let the suit premises for residential purpose and agreed license fees was of Rs. 20,000/- per month which was to be paid before 5th day of every month. The leave and license agreement dated 17/02/2016 was registered at Sub registrar office, Haveli. It bears his signatures and contents of leave and license agreement are correct.

10. To substantiate his contention, he has produced leave and license agreement dated 17/02/2016 (Exh.33). On perusal of leave and license agreement (Exh.33), it is registered document. The registered document is having presumption of genuineness. As per section 24 sub section 3(b) of MRC Act, 1999 an agreement of license in writing shall be conclusive evidence of the facts stated therein. In view of this provision,

the leave and license agreement (Exh.33) is a conclusive proof of facts contained therein. By producing leave and license agreement (Exh.33), the applicant proves that the leave and license agreement was executed on 17/02/2016.

11. The respondent No. 1 has deposed (Exh. 66) that there is neither leave and license agreement between the applicant and the respondent nor relationship as licensor and licensee. They have been residing in the suit premises as tenants. He is illiterate and he could not read and write in English Language. By taking undue advantage of his illiteracy and by misrepresentation the applicant prepared alleged leave and license agreement in English language instead of rent agreement. The applicant misguided and cheated them. The leave and license agreement executed for the period of 5 years. However, he got the knowledge it is for only 11 months.

12. To substantiate contention of the respondents, the Ld. Advocate of the respondents invited my attention to the cross examination of the applicant. In his cross examination, the applicant admitted that in NOC certificate there is a mention 'NOC for renting out the flat', there is also mention of word tenant by the manager, there is no mention of word 'licensee' in NOC. The applicant further admits that on 12/01/2016 the respondents issued notice to him mentioning that the relation between the applicant and the respondents is as tenant and landlord. Along with notice, the respondents issued 6 cheques for the period of 10/01/2010 to 05/06/2016. There is also mention that cheques were issued for rent. He

further admitted that he encashed the cheques. He did not reply the notice dated 12/01/2016.

13. On perusal of NOC (Exh.52) it was issued by the Manager of the Society wherein mentioned that NOC for renting out flat. On perusal of notice dated 12/01/2016, there is mention that 6 cheques were issued for payment of rent. It is also mentioned in notice that the relationship between the applicant and the respondents as tenant and owner. However, leave and license agreement was executed after the notice, therefore the contentions of notice cannot override to terms of leave and license agreement. The respondent has also relied on receipt of maintenance (Exh.88) wherein mentioned that the respondents are tenants. On perusal of receipt, it is photocopy. It is printed form. It was valid till November 2015. The present agreement executed on 17/02/2016, therefore the terms of receipt (Exh.88) cannot override the terms of leave and license agreement.

14. **In the case of Rajendra B. Nair v. Suresh D. Dyanmothe, 2002 (3) Bom. L.R. 766, 2002 (4) Mh. L.J. 93, 2002 (6) Bom. C.R. 427, the Hon'ble Bombay High Court held that, “ Mere use of words “rent” or “compensation” would not dispositive of legal relationship between the parties. Reference to the fact that the licensee will not let or sublet the premises cannot be construed to as a right of tenancy was created in favour of the licensee. Licensee can not claim an immunity from the obligation cast upon him by section 13A-2 to vacate the premises upon the**

expiry of license by the institution of a Declaratory Suit in the Small Causes Court.”

15. According to law, the relationship between landlord and tenant can be decided on the basis of agreement. In the absence of written agreement, the contention of the tenant about terms and conditions subject to which a premise have been given to him by the landlord on leave and license or have been let to him, shall prevail unless proved otherwise. The nature of tenancy can be decided on the basis of leave and license agreement and in the absence of said agreement the contention of the tenant about terms and conditions shall prevail. In the present case, there is leave and license agreement (Exh.33) between the applicant and the respondents. The terms and conditions of leave and license agreement (Exh.33) shall be conclusive proof.

16. It is the contention of the respondents that said leave and license agreement was prepared under misrepresentation and by fraud. It is settled law that, when fraud, misrepresentation or undue influence is alleged by a party in proceeding, normally, the burden is on him to prove such a fraud, undue influence or misrepresentations. But, when a person is in fiduciary relationship with another and later is in position of acting in confidence, the burden of proving the absence of fraud, misrepresentation or undue influence is upon the person in the dominant position, he has to prove that there was fair play in the transaction and the transaction is genuine and bonafide.

17. In the present case, leave and license agreement is registered document. Registered document is having presumption of genuineness. As per section 24 (3) b) of MRC Act, the document of leave and license in writing and registered is conclusive evidence of facts stated therein. By producing the document, the applicant proves that the transaction is genuine. The applicant has deposed that the contents of leave and license agreement are true and genuine. The applicant and the respondents are licensor and licensees. As per the terms and conditions of document, both are having equal rights regarding the document. There is no fiduciary relationship between them. In such circumstances, now the burden of proving facts of misrepresentation and fraud is on the respondents. It is contention of the respondent No. that the applicant made promise that alleged agreement is rent agreement for 5 years. He does not know English language, therefore he could not read and understand the agreement. During his cross examinations, the respondent No. 1 admitted that apart from this agreement, there is no separate agreement between him and the applicant that licensed premise let on rent for 5 years. He further admitted that his wife has been educated upto 10th standard. She being licensee signed on the leave and license agreement. The respondent No. 1 signed on the leave and license agreement in English language. The respondents issued a notices (Exh.82 and 90) to the applicant, which are in English Language. The respondents also issued 11 cheques (Exh.91 to 101) which are written in English Language. The respondents also filed say (Exh.70), which is in English Language. The agreement for the period 05/01/2015 to 30/11/2015 of the licensed premises is admitted by the

respondents in para No. 11 (b) of written statement (Exh.15). The said agreement is also in the English language. Most of the terms of agreements (Exh.33 and 34) are the same. During his cross examination the respondent No. 1 admitted the email (Exh.107) which sent by the applicant to him. He identified the said email before this authority. The said email is in English Language. The respondent No. 1 further admitted in his cross examination that after receiving email (Exh.107), the subsequent leave and license agreement dated 17/02/2016 was executed. Considering all these facts, it appears that the respondent No. 1 is having knowledge of English Language. Even if for the sake of argument assumed that the respondent No. 1 is not having knowledge of English, he can read and understand the said agreement through his wife or any other person who is having knowledge of English. He had having ample opportunities to know the facts of the agreement. After the leave and license agreement, the respondents paying the license fees till October 2011. He did not raised the objection regarding the leave and license agreement till the notice dated 10/10/2016. Therefore, the bare contention of the respondent No. 1 that he is illiterate and he could not understand the document, said facts are not sufficient to discard the registered document which is having presumption of genuineness and conclusive proof of evidence. There are no circumstances which show that the leave and license agreement was executed under misrepresentation or by fraud.

18. The respondent also filed Civil Suit No. 60/2017 before the Hon'ble Small Cause Court for declaration and injunction. The respondent No. 2 in his cross examination admitted that the said civil suit is dismissed

in default. The respondent also filed 11 cheques Nos. 086102 of Rs. 20,000/- , 086103, 086109 to 086117 of Rs. 22,000/- each of Saraswat Bank, Branch Baner towards the payment of rent at Exh. 91 to 101 along with notice (Exh.90) dated 10/10/2016. There is no record that said cheques were received and encashed by the applicant. The notice (Exh.90) is dated 10/10/2016 and RPAD receipts (Exh. 103) is dated 13/10/2016. There is no acknowledgement on record which shows that said notice was received upon the applicant. The respondent tried by hook and crook that there was relationship between applicant and respondents as landlord and tenants. However, he failed to prove by cogent evidence that there is a tenancy relationship between them.

19. In the case of **Swami Atah @Raphael vs Thirty Poonawala 1996 (1) MhLJ 603, the Hon'ble Bombay High Court has held that,** the agreement of license in writing and registered is a conclusive evidence, not open to parties to lead evidence to establish that real transaction was of tenancy.

20. **In the case Sales India Vs Rita M. Rupani 1997 (2) MhLJ, the Hon'ble Bombay High Court has held that,** no other evidence can be allowed to be given for the purpose of disproving the facts stated in the leave and license agreement which is in writing.

21. In the case of **Shakeel Ahmed Fateh Mohd. Sundke v. Aziz Ahmed Khan, 2008 (5) AIR BOM R214,** *the Hon'ble Bombay High court held that, once it is established that Agreement of leave and license is in writing, the Courts cannot look into intention of parties and if period*

of license has expired, The Competent Authority is statutorily obliged to pass an Order for Eviction on an Application made to it under the provisions of Rent Control Act, 1999, and on failure to vacate, the Licensee shall be liable to pay double rate of license fees.

22. It is also contention of the respondents that the co-owner of the licensed premises i.e. wife of the applicant is not a party to the leave and license agreement and she did not give the consent. Therefore, the alleged leave and license agreement is void ab-initio. During cross examination, the applicant admitted that his wife is not a party to leave and license agreement. She is co owner of the licensed premise. At the time of execution of leave and license agreement, written consent of his wife was not obtained.

23. The wife of the applicant has not raised the objection regarding the execution of leave and license agreement. Nowhere stated in MRC Act, 1999 that all the co-owners of the licensed premises should have be the party of the license. In the absence of any provision and neither raised objection by the wife of the applicant, the contention of the respondents that the alleged agreement without consent of the applicant's wife is void ab-initio has no substance.

24. In the present case, leave and license agreement (Exh.33) is in writing and registered. In clause 24 of leave and license agreement has stated that, it is clearly understood between the parties to this deed that no relationship of landlord and tenant exists between them and that the licensor has not granted the tenancy rights in the said premises to the licensee by this deed. The licensee shall not make any claim of tenancy in

said premises. In view of settled legal positions, the agreement of license in writing is conclusive evidence, not open to parties to lead evidence to establish that real transaction was of tenancy. Also, no other evidence can be allowed to be given for the purpose of disproving the facts stated in the leave and license agreement which is in writing. Thus, the contention of the respondents that they are the tenant in the licensed premises and their relationship is as landlord and tenant is not acceptable.

25. From the evidence of the applicant and leave and license agreement (Exh.33), it appears that the applicant proves that there is registered leave and license agreement dated 17/02/2016 for the period of 11 months i.e. 01/01/2016 to 30/11/2016 in favour of the respondents as licensee of the licensed premises and the leave and license agreement expired on 30/11/2016. With this findings, I answer Issue No. 1 and 2 in the affirmative.

As to issue no. 3-

26. On perusal of leave and license agreement (Exh.33) and evidence of the applicant, it appears that the agreement of leave and license expired on 30/11/2016. The applicant has deposed that after the expiry of the period of agreement of license, the respondents failed to vacate the licensed premises. He issued notice on 15/11/2016 to the respondents. The applicant has produced office copy of notice (Exh.35) dated 13/11/2016, RPAD acknowledgements (Exh.36 and Exh.37). It appears that notice is duly served to the respondent No. 2. By issuing notice, applicant requested to the respondent for vacating the licensed premises on or before 30/11/2016, failing which the applicant shall initiate

proceedings before the Competent Authority. After receipt of the notice, the respondents failed to act upon on it. Thereafter, the applicant filed present application for recovery of possession of the licensed premises.

27. As per Section 24 of the Maharashtra Rent Control Act, 1999 on expiry of the period of license and on failure of licensee to so deliver the possession of licensed premises, landlord shall be entitled to recover the possession of such premises. In spite of expiry of license period, the respondents failed to vacate the licensed premises. Therefore, the applicant is entitled to vacate the same. With these findings I answer to Issue No. 3 in the affirmative.

As to issue No. 4

28. The applicant has deposed that even though the agreed license fees was of Rs. 20,000/- per month but the respondents had issued cheque for Rs. 19,500/-. In spite of request the respondent did not pay the remaining license fees of Rs. 200/-. Thereafter, the respondents have paid license fees of Rs. 20,000/- per month till August 2016. He had filed his account statement (Exh. 37). He contended that the respondents are liable to pay license fees for the month of November 2016 of Rs. 20,000/-.

29. Now, it is the duty of the respondents to show that they have paid license fees to the applicant. The respondent No. 1 has deposed that he issued 11 cheques Nos. 086102 of Rs. 20,000/- , 086103, 086109 to 086117 of Rs. 22,000/- each of Saraswat Bank, Branch Baner towards the payment of rent at Exh. 91 to 101 along with notice (Exh.90) dated 10/10/2016 by increasing 10% rent. The applicant in his affidavit (Exh.

31) has deposed that neither he received notice dated 10/10/2016 nor post dated cheques. Now burden is cast on the respondents to prove that the said notice and cheques were received by the applicant. Respondent has deposed that said cheques were not received by the applicant and same were encashed. The notice (Exh.90) is dated 10/10/2016 and RPAD receipts (Exh. 103) is dated 13/10/2016. There is no acknowledgement on record which shows that the notice and cheques were received by the applicant. The respondents filed account statement for the period 20/04/2016 to 02/04/2017. There is mention that on 04/05/2016 and 20/06/2016 cheques of Rs. 19,800/- were encashed. After that no other entry regarding cheques below Exh. 91 to 101 were encashed. It is the contention of the respondents that he had issued 11 cheques for advanced rent, in spite of that on 13/11/2016, the applicant issued false notice by claiming the vacant possession. The respondent No. 1 has deposed that he paid license fees by cheques or cash. But, there is no evidence on the record to show that after October 2016 the respondent paid license fees. However, the applicant has claimed license fees from November 2016. It means that the respondent paid license fees till October 2016.

30. During the cross examination the applicant admitted that, he had received Rs. 1,08,000/- as security deposit in respect of license agreement of 2015 and he did not return the said amount to the respondent. There is no mention in subsequent agreement that the earlier security deposit amount is continued for the license agreement dated 17/02/2016. It was not agreed between them the earlier security deposit amount will be continued in next agreement. The first agreement was

ending on 30/11/2015. Subsequent agreement was executed on 17/02/2016. During the period of 3 months, there was no agreement between them. In that period, the respondents were residing in the licensed premise. The applicant further admits that the security deposit amount of Rs. 1,20,000/- is mentioned in the license agreement dated 17/02/2016 and it was given to the applicant. There is no mention in agreement dated 17/02/2016 that the security deposit amount of the first agreement in 2015 will be considered for the security deposit of next agreement in 2016. In view of these admissions, the Ld. Advocate of the respondents argued that the applicant is liable to repay both the security deposit amounts total of Rs. 2,28,000/- to the respondents. There is no contention of the applicant that he repaid the security deposit amount to the respondents. There is no evidence on record that said amount was adjusted for the license fees.

31. On perusal of evidence, it appears that the respondent failed to pay the license fees from November 2016. As per sub section 2 of section 24 of the MRC Act, on expiry of period of license, the continuous possession on the part of the respondent/ licensee, become illegal and liable to pay the damages at the double rate of fixed license fees. Since, the respondents are residing in licensed premises even after expiration of leave and license agreement period, I found the applicant is entitled for the relief of eviction, and damages at the rate of double of license fees from the date of expiry. The applicant has proved that the period of license expired on 30/11/2016 and the license fees is of Rs. 20,000/-. Thus, the applicant is entitled to get the damages at the double rate of license fees i.e. at the rate of Rs. 40,000/- per month (Rs. 20,000 x 2= Rs. 40,000/-)

from 01/12/2016 till the handover of the possession of the licensed premises to the applicant after adjusting security deposit of Rs. 2,28,000/-. With these finding I answer to Issue No. 4 in the affirmative accordingly.

As to issue No. 5 and 6 collectively-

32. The respondent No. 1 has deposed in his evidence affidavit that he had incurred an expense of Rs. 10,00,000/- (Rupees Ten Lakhs) towards renovation of furniture, POP, new door, carpet, fan, A.C., wallpaper, Chair and C.C.T.V. camera and colour in the licensed premises. He obtained oral consent of the applicant for repairing of licensed premise. The respondent No. 2 has produced copy of bill (Exh.83) of Arch Dream Designers, copy of bill (Exh.84) of Willtech Engineers Pvt. Ltd and Sale orders of Kamal Limited (Exh. 85 to Exh.87) on the record.

33. On perusal of Exh.83, it is a bill of Rs. 7,55,600/- for the item Double and Single Bed wooden material, 3 Wardrobes, Study Table, Display Unit, Book Rack, Kitchen Knob, Wall Paintings, Gypsum ceiling, Shoe Rack. There is no date mentioned on said bill. The tax invoice bill (Exh. 84), having date of 30/03/2016 and it is a bill of A.C. Sale orders of Kamal Limited (Exh. 85 to Exh.87) are having dates 29/05/2015, 30/01/2015 and 23/01/2015. The said bills prior to execution of leave and license agreement dated 17/02/2016 (Exh.33). On perusal of cross examination of the respondent No. 2, he admits that the construction of his house Flat No. B-404, Krishnamurti Societ , Warje, Pune was going on till 2017. This admission shows that the construction of house of the

respondents was going on and thereby possibility cannot be ruled out that above said materials were used for his house.

34. The applicant in his cross-examination has vehemently denied that the respondent No. 1 has made such expenses. In view of above said rival contention of the parties, it is necessary to decide whether the respondent No. 1 made renovation and said renovation was made in the licensed premises with the permission of the licensor.

35. Section 14 of the MRC Act says that, *(1) not withstanding anything contained in any law for the time being in force and in the absence of an agreement to the contrary by the tenant, every landlord shall be bound to keep the premises in good and tenantable repair.*

(2) If a landlord neglects to make any repairs, which he is bound to make under subsection (1), within reasonable time after a notice of fifteen days is served upon him by post or in any other manner by a tenant or jointly by tenants interested in such repairs, such tenant or tenants may themselves make the same and deduct the expenses of such repairs from the rent or otherwise recover them from the landlord. Provided that, where the repairs are jointly made by the tenants, the amount to be deducted or recovered with interest by each tenant shall bear the same proportion as the rent payable by him in respect of his premises bears to the total amount of expenses incurred for such repairs together with simple interest at fifteen percent . per annum on such amount: Provided further that, the amount so deducted or recoverable in any year shall not exceed one-fourth of the rent payable by the tenant for that year.

36. I have gone through the leave and license agreement (Exh.33). In clause (9), it has mentioned that the licensee shall not be entitled to make any alternation or addition in the said premises except with written prior consent of the licensor. In clause No. 10 it has mentioned that, the licensee shall keep all fixtures, electric fittings, water connection in good running condition. It is a duty of the licensee to keep the premises clean and tidy.

37. In view of the rival contentions of both the parties and terms and conditions of leave and license agreement, I have gone through the evidence, the respondent No. 1 has deposed that he had obtained oral permission of the applicant. But applicant denied same. As per agreement terms written consent of licensor is necessary. On perusal of record, there is no notice on record which sent by the respondents to the applicant for any repairs of the licensed premises. As per section 14(3) for the purpose of calculating expenses of the repairs made under subsection 2, the account to whether with the vouchers maintained by the tenants shall be conclusive evidence of such expenditure and shall be binding on the landlord. In the present case, the respondent No. 1 has filed the bills but those are not in respect of renovations of the licensed premise. Most of bills prior to execution of leave and license agreement and Bills are also doubtful as discussed by this authority as above. The respondents failed to file details datewise account of expenditure which was incurred by them. They have only stated that they incurred of Rs. 10,00,000/- for renovation. It is a vague statement. There is no cogent evidence which shows that what expenditure is incurred for particular of items. Thus, in absence of

any cogent evidence, the respondents failed to prove that they had incurred of Rs. 10,00,000/- for renovation of licensed premises.

38. In his cross examination the applicant admitted that, there is no mention in leave and license agreement (Exh.33) that licensed premise is fully furnished or semi furnished. The admission is not sufficient to prove that the respondents made renovations in the licensed premise. There are number of suggestions put to the applicant by the respondents advocate but same were denied by the applicant. Mere suggestions are not sufficient to prove the facts.

39. It is also clear, that even if the respondent's acts can be assumed for the sake of argument only to be repairs, as the respondents had resorted to them without obtaining the previous consent of the applicant. Thus, respondent No. 1 would not be entitled to any compensation.

40. I would also like to add that, even the respondents are entitled to invoke Section 108 of the Transfer of Property Act, there is no basis whatsoever for his present claim. In the first place, as I have already observed, a landlord is under no obligation in law to effect any repairs to the building except those which he had successfully undertaken under the leave and license agreement; and admittedly it is not the respondents's case that there is any term in the tenancy agreement casting an obligation on the respondents to effect any repairs to the building apart from the minor repairs which is mentioned in agreement. In the second place, Section 108 of the Transfer of Property Act does not confer any right on a

tenant to effect a reconstruction of or improvements to the building and claim compensation.

41. I am also clear that the provisions of Section 70 of the Indian Contract Act cannot be legitimately invoked in this case. In the first place, it is difficult to say that the act of renovation done by the respondent No. 1 was lawfully done for the applicant. The use of the word "lawfully" in Section 70 of the Indian Contract Act, the legislature had in contemplation cases in which a person held such a relation to another as either directly to create or by implication reasonably to justify the inference that by some act done for another person, the person doing the act was entitled to look for compensation to the person for whom it was done. The person who made the payment had any lawful interest in making it, if not, the payment cannot be said to have been made lawfully. In the second place, the section is not attracted in cases of services rendered by the claimant at the request of or against the will of the other party sought to be charged with. In order to merit compensation, the services rendered must have been acquiesced in by the other party. As per section 14(2) of the Act, the notice has to be sent to the landlord. But, in the present case, the respondent No. 1 neither sent notice to the applicant in respect of repairs/ renovation of the licensed premise nor produced any cogent, reliable documentary evidence in respect of the renovation of the licensed premise. Therefore, they are not entitled renovation expenditure of Rs. 10,00,000/- with interest from the applicant. With this finding, I answer Issue No. 5 in the negative. In view of above findings and in answer to Issue no. 6 passed following order –

ORDER

1. The application is allowed.
2. The respondents are hereby directed to handover vacant and peaceful Possession of licensed premises “flat No. W-702, seventh floor, Topaz park, Survey No. 225/1, 225/2, 224/2, and 224/1, Park Street, Wakad, Pune- 411047” within 30 days from the date of this order to applicant.
3. The respondents are directed to pay damages to applicant at the rate of Rs.40,000/- Per month ($20,000 \times 2 = 40,000/-$) from 01.12.2016 to till handover the vacant possession of application premises after adjusting security deposit of Rs. 2,28,000/- from it.
4. The respondents are directed to pay the arrears of license fees for the month of November 2016, at the rate of Rs. 20,000/- per month to the applicant.

Place: Pune
Date : 24.10.2024

(C.P.Shelke)
Competent Authority,
Rent Control Act Court,
Pune Division, Pune.