

Presented on :	27/02/2024
Registered on :	27/02/2024
Decided On :	25/10/2024
Duration :	00Y07M28D

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

(Presided over by C. P. Shelke)

APP. NO.13 OF 2024

Exh.26

Shri. Dattatray Babanrao Nalawade

Age:44 years, Occ: Service,
R/at- Flat No.A-101, First floor,
Kapil Upawan Society, Near Lake Town,
Bibvewadi, Pune 37

.....**Applicant**

VERSUS

Smt. Kalpana Anil Mahalpure

Age: 56 years, Occ: Housewife,
R/at- Rajanigandha Cooperative Housing Society,
Flat No. 8, Mahesh Society,
Bibwewadi, Pune 37

..... **Respondent**

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

Appearance

Shri. Vijay Kondiba ThopateAdvocate for the applicant.
None for the respondent as Ex-parte

J U D G M E N T

(Delivered on 25th day of 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, arrears of license fees and damages.

2. It is the contention of the applicant that he is an owner of licensed premises which is mentioned in application. He has let licensed premises for residential purpose to the respondent by executing leave and license agreement dated 10/10/2023 for the period of 11 months. The agreed license fees is of Rs. 10,000/-. The respondent was agreed to pay Rs. 20,000/- towards interest free security deposit but she has paid only Rs. 10,000/- online towards security deposit. From the day one the respondent has failed to pay license fees and remaining security deposit amount of Rs. 10,000/-. Thus, the applicant has issued a notice dated 24/11/2023 to the respondent thereby demanding vacant possession of licensed premises within a month and terminated leave and license agreement. In spite of receiving termination notice, the respondent failed to vacate licensed premises. The respondent created nuisance to the society, therefore, the Rajanigandha Co-operative Housing Society has given complaint dated 20/11/2023 to the applicant. Hence, he is constrained to file this application.

The necessary details of the application are as under:

A] The description of premises mentioned in application :

“ Flat No. 8 admeasuring area of 52.48 Sq. Mtr, Second Floor, Rajanigandha Co-operative Housing Society, Plot No. 45, Survey No. 587, Mahesh Co operative Housing Society, Bibwewadi, Pune. (Hereinafter referred as ‘the licensed premises’) ”.

B] The period and details of leave and license agreement:

I] Period- 11 months commencing from 08/10/2023 to 07/09/2024.

II] Fees and Deposit – Monthly license fees is of Rs. 10,000/- Rs. 20,000/- Interest free refundable security deposit.

C] Default of payment of license fees: She failed to pay the license fees from the first month.

3. The respondent is served with notice as contemplated under section 43 (2) (3) of MRC Act. The notice was returned unclaimed. The respondent failed to appear within 30 days as per Section 43 of MRC Act, 1999. Therefore, on 20/05/2024, this authority passed Ex-party order against the respondent. Hence, the matter is heard and taken up for decision.

4. After going through entire documents and claim, following points are arise for my consideration. I have recorded my findings there on, which follows my reasoning.

Sr.No.	Points	Findings
1	Whether there is leave and license agreement between parties in respect of licensed premises and they are having relationship as a licensor and licensee?	Yes
2	Whether the period of license is expired by termination?	Yes
3.	Whether the applicant is entitled for possession of the licensed premises?	Yes
4.	Whether applicant is entitled for arrears of license fees and damage	Yes

	at double rate of the license fees as prayed?	
5.	What order?	Application is allowed.

REASONINGS

AS TO POINTS 1, 2 AND 3 -

5. To substantiate his contention, Shri. Dattatrey Nalawade has filed affidavit of examination in chief (Exh. 14) and reiterated the contents of the main application. The applicant produced certified copy of Index-II of assignment deed (Exh.18), which shows that, the applicant is the owner of the licensed premises.

6. In the present case, leave and license agreement (Exh.17) is registered document. Therefore, it is conclusive evidence of facts stated therein as per **section 24 - Explanation (b) of MRC Act**. On perusal of certified copy of registered Leave and license agreement (Exh 17), it appears that the licensed premise was given on license for residential purpose. The document is sufficient to prove the fact that there is leave and license agreement between applicant and respondent in respect of licensed premises and they are having relationship as licensor and licensee.

7. The applicant in his evidence affidavit deposed that the respondent has paid only Rs. 10,000/- towards security deposit instead of agreed Rs. 20,000/-. From the day one, the respondent has not paid any license fees. The respondent violated terms and conditions of leave and license agreement. The clause 10 of leave and license agreement

says that, “If the licensee commits default in regular and punctual payment of monthly compensation, the licensor is entitled to cancel or revoke the license.” In view of clause No. 10 of leave and license agreement, the applicant issued notice to terminate the license. Hence, he produced copy of notice (Exh. 20) dated 24/11/2023, postal receipts and envelope (Exh.21 to 23) and postal track report (Exh. 24). From the evidence it appears that the termination notice is duly served to the respondent.

8. 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. Now the question arises before expiry of the period of license whether the applicant is entitled to terminate the license and recover the possession from the respondent.

9. In a case of Chimanlal Shah Vs Mrs. Farhana Abdul Jaffar Sayyed 2009 (6) Mh.L.J., the Hon’ble Bombay High court in para No. 28 last 4 lines says that, Section 24 of the Rent Act clearly speaks of occasion to invoke the powers by the Competent Authority to evict the person in occupation of the premise whose license expire and yet continue to occupy the premises. The expiry of license can be also by way of termination thereof. Being so, the second ground challenged is to be held totally devoid of the substance.

10. In the case of Shital H. Ghia Vs Abdul Razaq Merchants and Ors 2018 SCC Online Bom 4187, the Hon’ble Bombay High Court in Para No. 19 and 20 says that, A perusal of the definition of the

expression of 'license' shows that where one person grants to another, right to do, or continue to do, in or upon the immovable property of grantor, something which would, in the absence of such right, be unlawful and such right does not amount to an easement or an interest in the property is called license. It is not in dispute that, the leave and license agreement is a registered instrument. Explanation (b) of section 24 of the Act lays down that an agreement of licensee in writing shall be the conclusive evidence of the facts stated therein. It is also not in dispute that the respondents No. 1 to 4 had issued notice on 23/06/2014 and thereafter filed application under Section 24 on 08/10/2014. Thus, the respondents No. 1 to 4 had revoked the license. In the case of Prakash G. Kothari V. Balasaheb S. Jadhav, (2007) 4 Bom CR 460, this Court observed in paragraph 11 thus, "11.Expiry of license can be also by termination thereof...." In view of thereof, I do not find any merit in the Submission of Dr. Saraf that application was premature. In the light of the discussion, I do not find that the authorities below committed any error in passing the impugned orders. Hence, petition fails and the same is dismissed.

11. In the said case, prior to expiry period of license, the application was filed before the Competent Authority. The Ld. Advocate of the respondent argued that it is premature but, said argument was rejected by the Hon'ble High Court.

12. Now, in the present case, there is leave and license agreement. The notice of termination of license was issued to the respondent. It is the contention of the applicant that the respondent did not pay the license fees. In such circumstances, it is not judicious to

wait for expiry of period of leave and license by the applicant. Thus, the applicant is entitled to terminate the license as per clause 10 of the leave and license agreement (Exh.17). In spite of termination notice, the respondent failed to vacate the licensed premises. Therefore, the applicant is entitled to vacate the same. Hence, for this reason I have recorded my findings as to point no.1 to 3 in the affirmative.

AS TO POINT NO 4 AND 5 :-

13. Even after termination of the leave and license agreement, the respondent has not vacated the licensed premises. Section 24 of the MRC Act, empowered this authority to pass order of eviction and damages on the expiry of leave and license agreement. In the circumstances, the Hon'ble Bombay High Court in the case of K. Gopalrao & Others Vs. Deepak Niranjanath Pandit 2013(5) MhLJ 78 held that, the effect of Section 45 read with Section 47 of the Maharashtra Rent Control Act, 1999 is that the Competent Authority alone has jurisdiction to execute its orders under the Act. The provisions under the Rent Act take care of possession as well as such monetary claims. Hence, I find the applicant is entitled for eviction order and damages at the rate of double of license fees from the date of termination of leave and license agreement. On perusal of leave and license agreement, it appears in Clause No. 10 that by giving notice in writing of one month and the licensor is entitled to cancel the agreement and get vacant possession of the licensed premises. From the evidence it appears that, the termination notice is served upon the respondent on 28/11/2023. After the one month of the notice the license is terminated on 28/12/2023.

14. Thus, the applicant is entitled for damages at the rate of double of license fees of Rs. 20,000/- (Rs. 10,000/- x 2= Rs. 20,000/-) from 28/12/2023 till hand over the possession of the licensed premises by deducting security deposit of Rs. 10,000/-. The applicant is also entitled to arrears of license fees of Rs. 10,000/- per month for October 2023 and November 2023 total of Rs. 20,000/-. Accordingly, I answered point 4 in the affirmative and in answer to point no. 5 passed following order –

ORDER

1. The application is allowed.
2. The respondent is hereby directed to handover vacant and peaceful Possession of licensed premises i.e. Flat No. 8 admeasuring area of 52.48 Sq. Mtr, Second Floor, Rajanigandha Co-operative Housing Society, Plot No. 45, Survey No. 587, Mahesh Co operative Housing Society, Bibwewadi, Pune 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 (10,000 x 2 = 20,000/-) from 28/12/2023 to till Handover the vacant possession of licensed premises by deducting security deposit of Rs. 10,000/-.
4. The respondent is directed to pay the arrears of license fees for the months of October 2023 and November 2023 of total Rs. 20,000/- to the applicant.

Place: Pune

Date : 25.10.2024

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