

Presented on :	23/01/2017
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Decided On :	05/11/2024
Duration :	07Y:09M:13D

**IN THE COURT OF COMPETENT AUTHORITY RENT**

**CONTROL ACT, PUNE DIVISION, AT-PUNE,**

**(Presided over by C.P.Shelke)**

**APP. NO.12 OF 2017**

**Exh.65**

**1) Mr. Bhojrajmal Hiranand Chandnani**

Age- 56 years, Occ- Business,

**2) Mr. Gobindram Hiranand Chandnani**

Age- 48 years, Occ- Business,

Both R/at-5/51 Saraswati Colony, 819A, Bhavani Peth, Pune 411002

Both Presently R/at- Malaysia

**Through their Power of attorney holder**

**Mr. Subhash Maruti More**

Age- 45 years, Occ- Service,

R/at- Sterling Nisarg, Dhayari, Pune 411 041

**.....The Applicants**

**VERSUS**

**Mrs. Sujata Amit Chakrawarti**

Age- 48 years, Occ- Housewife,

R/at- Flat No. 205, Maple Court, Parmar Park, Wanorie,

Pune 411040

**.....The Opponent**

**Appearances:**

Shri. Manoj M. Gadkari

.....Advocate for the applicants.

Shri. Mangesh Shah

Mrs. Vaishali Desai

..... Advocate for the opponent.

**JUDGMENT**

(Delivered on 5<sup>th</sup> November, 2024)

1. The applicants filed application under Section 24 of Maharashtra rent control Act 1999 (Herein after referred as MRC Act), claiming relief of recovery of possession and damages at double the rate of license fees.

2. The applicants contended that they are owner of “Flat No. 205 (also numbered as 225 E) admeasuring about 1215 Sq. Ft., second floor, Maple Court, Parmar Park Co-operative Housing Society Ltd, Survey No. 77/48/1A and 77/71 (A and B) of village Wanorie, Taluka Haveli, District Pune. (Herein after referred as suit premise). The licensee was in need of the suit premises for residence. The applicant’s deceased father namely Shri. Hiranand Samandas Chandnani was owner of the suit premise and he let the suit premises to the opponent for residential purpose by executing leave and license agreement dated 15/05/2002 for 11 months commencing from 15/05/2002 and ending on 14/04/2003. The agreed license fee was of Rs. 7,000/- per month and interest free security deposit of Rs. 60,000/- was paid by the opponent. However after expiry of license period the opponent did not vacate the suit premise. The applicant’s father requested her to vacate the suit premises but she had given undertaking that she will vacate suit premise as soon as possible. The applicant’s father once again approached the opponent in November 2007 and requested her to vacate the suit premise. The opponent again promised that she will be vacated the suit premise in March 2008. On 23/11/2007, she promised to pay the outstanding license fees as well as damages and also promised to execute

leave and license agreement. However, on 29/11/2007, the opponent filed false Civil suit No. 569/2007 before Small Causes Court Pune against the applicant's father. The Hon'ble Small Cause Court by passing an order dated 11/12/2007 restrained the defendants by permanent injunction from dispossessing the plaintiff from the suit premise without due course of law. The said order and judgment was challenged by the applicant's father before Hon'ble District Judge, Pune. On 26/06/2008, the Hon'ble District Judge, Pune had set aside the Judgment and order.

3. On 31/01/2012, Mr. Hiranand Chandnani issued notice to the opponent by calling upon her to vacate the suit premises and to pay compensation of Rs. 14,000/- per month from 14/04/2003 for illegal occupation. The opponent has received the notice but failed to comply the same. The father of the applicants died on 07/09/2012. The applicants and Smt. Chandra Hiranand Chandnani are the legal heirs of the deceased Shri. Hiranand Chandnani. Smt. Chandra Hiranand Chandnani has released her 1/3<sup>rd</sup> share in favour of the applicants vide release deed dated 23/01/2013. They are claiming the damages at the rate of Rs. 14,000/- per month from 15/04/2003 till filing of the application total of Rs. 10,04,000/-. They have adjusted security deposit amount of Rs. 60,000/- towards license fees.

4. Opponent was granted leave to defend. Consequently, she filed written statement (Exh.13). It is the contention of the opponent that as regular civil Suit No. 102/2017 is pending before Hon'ble Small Causes Court, Pune against the applicants, therefore, the application is not maintainable. After receipt of the notice dated 31/01/2012, the opponent

immediately replied the same on 07/02/2012. Shri. Hiranand Chandnani and the opponent mutually agreed to continue possession on monthly tenancy at the rate of Rs. 7,000/- per month from 10/02/2012. The relationship of licensor and licensee is converted into tenant and landlord. The opponent has paid rent Rs. 7,000/- per month till 31/03/2017. The leave and license agreement is not registered. After lapse of 15 years, the application is filed and the same is time barred. The applicants did not file succession or heirship certificate to show their ownership therefore, the applicants cannot be claimed as landlord. The Competent Authority does not have jurisdiction to try this application. The POA holder Shri. Ashok Indani of Mr. Hiranand Chandnani has let the suit premise to the opponent for a period of 11 months (i.e. from 15/05/2002 to 14/04/2003) on the basis of unregistered leave and license agreement. The owner of suit premises died on 07/09/2012. His wife Smt. Chandra Hiranand Chandnani has also died. After the execution of leave and license agreement, the dispute arose between Mr. Ashok Indani and the opponent about tenancy right, therefore, she filed regular Civil Suit No. 569/2007 for declaration of tenancy right and injunction. The applicants are playing fraud upon this court by filing execution application proceeding ie. Darkhast No. 85 of 2015. POA dated 18/08/2014 which is executed in favor of Subhash More is false. The present application which is filed through alleged POA holder is not maintainable. The opponent is statutory tenant. In spite of observation of Hon'ble High Court, the applicant did not adopt due process of law for the recovery of possession of the suit premise. There is no relationship between the applicants and the opponent

as licensor and licensee. Therefore as per Section 33 of MRC Act, Small Cause Court has jurisdiction to try this proceeding. Hence, she prayed to reject the application.

5. On going through the pleadings of both the parties and considering the controversy in application, Ld. Predecessor of this authority has framed issues (Exh.35) and I have reproduced them and I record my finding thereon for the reasons as follows.

<b>Sr. No.</b>	<b>Issues</b>	<b>Findings</b>
1	Do the applicants prove that they have executed registered agreement of leave and license dated 15/05/2002 in favor of the opponent as licensee of the suit premise?	Yes
2	Do the applicants prove that there is relationship between them and the opponent as like as licensor and licensee?	Yes
3	Do the Applicants prove that period of license of suit premise is expired?	Yes

4	Do the Applicants prove that they are entitled to recover possession of suit premise from the Opponent?	Yes
5	Do the Applicants prove that they are entitled to claim damages at the double rate of the license fee from 14/04/2003 till actual delivery of possession of the suit premise by opponent to the applicants?	Yes
6	What order?	The application is partly allowed

### **REASONINGS**

6. To prove the case, the applicant No. 2 Mr. Gobindram Hiranand Chandnani has examined himself at Exh.43. The applicants have produced original copy of special power of attorney (Exh.47) executed by the applicants in favor of Shri. Subhash More, letter (Exh.48) issued by Parmar Park Co-operative Housing Society, Share certificate (Exh.49), certified copy of Judgment (Exh.50) of Civil Suit No. 569/2007, certified copy of judgment (Exh.51) of Civil Appeal No. 546/2008, notice reply (Exh.52) dated 07/02/2012, Death certificate

(Exh.53) of Mr. Hiranand Chandnani, certified copy of Index-II of Release deed (Exh.54), certified copy of execution petition No. 85/2015 (Exh.55), leave and license agreement (Exh.56), copy of passport of the applicant No.2 (Exh.57) and copy of order (Exh. 60) of Civil Revision Application No. 757/2011. The applicants have filed evidence closed pursis (Exh.61).

7. Ld. Advocate of the opponent has filed documents with list below Exh.59 i.e. certified copy of execution petition, No. 85/2015 and order below Exh.12 (Exh.63 and Exh. 64). She also produced copy of application which filed in RCS No. 102/2017, rent deposit receipts and rent acknowledgement receipts. In spite of opportunities, the opponent failed to examine herself. On the date of 11/07/2014, the Ld. Advocate of the opponent orally submitted that opponent is not interested to lead evidence. Thus, this authority by passing order below Exh. 1 dated 02/08/2024 closed evidence of the opponent.

**As to issues no. 1 to 3 collectively-**

8. All these issues are interlinked to each other therefore to avoid repetition of facts and evidence I have discussed them collectively.

9. To attract the provisions of section 24 of MRC Act, 1999 the following conditions shall be fulfilled:

- i) The licensor should be owner of the licensed premise
- ii) The period of license should have expired or terminated
- iii) The leave and license agreement may in writing.
- iv) The licensed premises should be let for the residential purpose.

10. In order to prove the above conditions, the applicant No. 2 Mr. Gobindram Hiranand Chandnani (Exh.43) has deposed that the suit premise was owned by his father Mr. Hiranand Samandas Chandnani. His father died on 07/09/2012. After the death of his father, the applicants and Smt. Chandra Hiranand Chandnani are the legal heirs of deceased Mr. Hiranand Chandnani. Smt. Chandra Hiranand Chandnani executed release deed in favour of the applicants. To support his contentions, he produced copy of Index II of release deed (Exh.54). He has further deposed that his father let the suit premise to the opponent on the basis of leave and license agreement (Exh.56) dated 15/05/2002 for the period of 11 months commencing from 15/05/2002 and ending on 14/04/2003. After expiry of period of license, the opponent did not vacate the suit premise. Therefore his father issued a notice (Exh.52) to the opponent for vacating the suit premise. In spite of receipt of notice, the opponent did not vacate the suit premise. On the contrary she filed Regular Civil Suit No. 569/2007 for declaration and injunction. Said suit was decreed. Thereafter, his father filed Civil Appeal No. 546/2008 against the said decree and judgment. The appellat court set aside the decree and judgment. Thereafter, the opponent filed Civil Revision Application No. 757/2011 before the Hon'ble High Court. The Hon'ble High Court confirmed the decree of Appeal and rejected the revision application by observing that the licensor will have to adopt due process of law for recovering the possession of the suit premises. Therefore, after death of his father, the applicants filed present application for recovery of possession of the suit premise.



11. The opponent raised her defence in written statement (Exh.13) by stating that the alleged leave and license agreement is not registered. After expiry of leave and license agreement, the applicant and their authorized person accepted the rent. After receipt of notice dated 31/01/2012, the opponent replied the same on 07/02/2012. It was mutually agreed between Shri. Hiranand Chandnani and the opponent to continue the possession of the suit premises on monthly tenancy i.e. from 10/02/2012 at monthly rent of Rs. 7,000/- inclusive of all taxes. It is crystal clear that the suit premise has been given on the tenancy basis and there is no relationship as licensor and licensee between the opponent and Hiranand Chandnani. Therefore, this authority has no jurisdiction to entertain the application. As per section 55 (2) of the MRC Act, 1999 if the leave and license agreement is not registered then the defence of tenant shall be accepted.

12. To substantiate her defence, the opponent did not examine herself. She merely produced certified copies execution petition No. 85/2015 and order (Exh.63 and 64). But those documents are not sufficient to prove the plea of tenancy. During cross examinations, the Ld. Advocate of the opponent put the question to the applicant No.2 that the applicants neither produced their original Id card of Malaysia nor succession certificate to show that they are the only legal heirs of Hiranand Chandnani. The opponent also brought on record that photocopy of passport shows surname of the applicant No. 2 as "Chand". In the death certificate (Exh.53), his father's surname is also shown "Chand". The applicants did not produce any order on record to show that surname

Chand and Chandnani both are same. The applicants did not produce any record i.e. completion certificate, sanction plan of the corporation to show that Flat No. 205 and 225 E are the same. Further in his cross examination the applicant No. 2 admitted that he neither appeared in RCS No. 102/2017 nor filed reply. He did not aware of injunction order dated 05/04/2017 passed by Hon'ble Small Cause Court. He did not file the appeal against the said order. He did not aware with the fact that the opponent deposited monthly rent of Rs. 7,000/- from May 2017 onwards and POA holder accepted the said rent amount. The affidavit (Exh.43) is executed before the notary of Hyderabad and his Advocate Shri. Gadkari was not present with him. The content of the affidavit "I have signed herein under today at Pune" is false. The POA holder has produced all the documents.

13. Apart from the above said facts, nothing more was brought on record to prove the defence of the opponent. During the cross examination the applicant No. 2 admitted that he received the amount of license fees as per execution petition (Exh.55). Therefore the opponent contented that after expiry of leave and license agreement, the applicants accepted the rent which is sufficient to prove the plea of tenancy. Merely acceptance of rent by the applicants and deposited rent by opponent after expiry of leave and license agreement would not amount to waiver of the right of termination of licensee. *As per section 24 (3)(b), the agreement of license in writing is conclusive evidence, not open to party to lead evidence to establish the real transaction was of tenancy* as held by **the Hon'ble Bombay High court in case Swami Atah @ Raphael Alfandry vs Miss.**

**Thirty Poonawala 1996(1) MhLJ 603.** Further in the case **Sails India vs Rita M. Rupani 1997(2) MhLJ 269**, 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 leave and license agreement which is in writing”*.

14. In the present case, the opponent filed Civil Revision Application No. 757/2011 before the Hon'ble High Court of Judicature at Bombay. On perusal of copy of order (Exh.60) of Hon'ble High Court, in para No. 5 observed that, *“In the cross examination, she was shown the agreement of license dated 15<sup>th</sup> April, 2002. She admitted that the document bears her signature. She admitted that she was paying monthly amount of Rs. 7,000/- a per the agreement. Lastly she stated that her intention was to comply with the terms and conditions of the said agreement while executing the same and she was faithfully complying with the terms and conditions of the agreement. The Appellate Court has precisely relied upon the aforesaid statements made by the applicant in the cross-examination. The applicant admitted that there was an understanding to execute such leave and license agreement. She accepted the execution of the leave and license agreement for the period ending with 14<sup>th</sup> April, 2003 and in fact, she stated that she intended to comply with the said agreement. In examination-in-chief, it is not stated that in what manner the tenancy was created after 14<sup>th</sup> April 2003. Thus, the Appellate Court came to the conclusion that the Applicant has failed to prove the plea of tenancy. Therefore, the Appellate Court has rightly interfered with the discretionary decree of perpetual injunction. However,*

*while dismissing the suit, the Appellate Court has observed that the respondents will have to adopt due process of law for recovering the possession of the suit premises. It is obvious that the respondents will have to follow due process of law for evicting the Applicant.”*

15. Further the opponent raised the defence that leave and license agreement was not registered. In absence of registration of document its contents could not be accepted. Therefore, contention of the opponent that there is tenancy agreement between the parties will prevail unless otherwise proved. The leave and license initially was not registered. However, during the proceedings, the applicants filed the application for sending the agreement for impounding to the Collector. Accordingly, the Collector of Stamps collected stamp duty and penalty on the said leave and license agreement and issued a certificate at Exh. 28 by stating that, the leave and license agreement is impounded.

16. Section 38 of Indian Stamp Act says that, when a person impounding a document under Section 33 has, by law or consent of the parties, authority to receive the evidence and admit such instrument upon payment of penalty as provided Section 35 or of duty as provided by Section 37, the collector send the document together with certificate in writing stating the amount of duty and penalty levied to the court in respect thereof.

17. It appears from the certificate of Collector of Stamps, the leave and license agreement (Exh.56) was impounded. Therefore, now it is admissible in evidence.

18. The presumption under sub-section (2) of [Section 55](#) of the Act is a rebuttable presumption. In the present case, after adducing the evidence, the licensor applicants have proved that the agreement in question is a leave and license agreement and does not create relationship of landlord and tenant. In short, the agreement dated 15/05/2002 is not a tenancy agreement, but, is a leave and license agreement.

19. In the case [of Raj Prasanna Kondur v Arif Taker Khan and others, \(2005\) 4 Bom CR 383, the Hon'ble Bombay High court](#) has held that

*12. It is also to be noted that the Explanation Clause (b) to [Section 24](#) of the said Act specifically provides that "an agreement of license in writing shall be conclusive evidence of the fact stated therein." This is in relation to the evidentiary value of the written agreement of licence. It nowhere prescribes that such an agreement is necessarily to be a registered one. Undoubtedly, the conclusiveness spoken of under the said clause is in relation to the facts stated in the written agreement, irrespective of the fact that the agreement is registered or not.*

*13. The said Clause (b) in the Explanation to Section 24 may, at first glance, appear to be contrary to the provisions under Section 55 of the said Act, since Sub-section (1) of Section 55 requires an agreement to be in writing, besides its registration being mandatory, and Sub-section (2) thereof provides that in the absence of written registered agreement, the contention of the licensee regarding terms and conditions of the agreement would prevail, unless proved otherwise. It is to be noted that the presumptive value attached to the contention of the licensee in relation to the terms and conditions of the license is for the eventuality of "absence of written registered agreement", whereas, the conclusive evidence spoken of under Clause (b) in the Explanation to [Section 24](#) relates to "facts" stated in the written agreement. Harmonious reading of [Section 55\(1\)](#) and (2) along with the said Clause (b) in the Explanation to [Section 24](#) of the said Act would reveal that though it is mandatory for the landlord to get*

*the agreement of leave and license recorded in writing and registered under the [Registration Act, 1908](#), failure in that regard would warrant consequences as stipulated under [Section 55](#) of the said Act, however, once the matter reaches the stage of evidence, and if there is an agreement in writing, though not registered, even then the facts stated in such agreement could be deemed to be conclusively established on the basis of such written agreement itself and there would be no other evidence admissible in that regard. On the other hand, the provisions of [Section 55\(2\)](#) and [55\(3\)](#) of the said Act relate to the consequences of failure on the part of the landlord to comply with the requirement of registration of the agreement. In other words though, in terms of Sub-section (2) of [Section 55](#) of the said Act, there will be presumptive value to the contentions of the licensee in respect of the terms and conditions of the agreement in the absence of the registered written agreement, nevertheless, once the agreement is in writing and even though it is not registered, the same, as regards the facts stated therein, would be deemed to have been proved conclusively on production of the agreement itself, and in which case, any presumption arising in relation to the terms and conditions of the license contrary to the facts stated in such agreement would stand rebutted.*

20. In the case of **Amit B. Dalal Vs Rajesh Doctor, 2010(5) AIR BOM.R 683 para No. 20**, the Hon'ble Bombay High Court has held that, *there is one more important aspect of the matter. An agreement of leave and licence does not require registration under the [Registration Act, 1908](#) (hereinafter referred to as the said Act of 1908). [Section 49](#) of the said Act of 1908 provides that no document which requires registration either under [section 17](#) or under the [Transfer of Property Act, 1882](#) can be received as evidence of any transaction affecting such property unless it has been registered. Thus [section 49](#) of the said Act is applicable only to the documents which require registration either under [section 17](#) of the said Act of 1908 or under the [Transfer of Property Act, 1882](#). Under the said Act, while providing for consequences of non-registration, the legislature has not chosen to provide for drastic consequences as provided under [section 49](#) of the said Act of 1908.*

*Therefore, non-registration of a document required to be registered under [section 55](#) of the said Act attracts limited consequences provided under [sub-section 2](#) thereof apart from prosecution under [sub-section 3](#). An unregistered document which requires registration under [section 55](#) of the said Act can be read in evidence provided the same is proved and the same is otherwise admissible in evidence. [Section 49](#) of the said Act of 1908 will not be applicable to such document which is required to be registered under [section 55](#) of the said Act. Therefore, a document which requires registration under [section 55](#) of the said Act does not become an invalid document. The presumption under clause (b) of explanation to [section 24](#) of the said Act is applicable only when an application for eviction is filed relating to the premises given on license for residence. In other proceedings, the said presumption may not apply. Therefore, notwithstanding the non-registration of an agreement in writing of leave and license in respect of the premises given for residential use, when an application under [section 24](#) is made, **the clause(b) will apply to such agreement and it will not be open for the licensee to lead any evidence contrary to the terms and conditions provided in the said agreement.***

21. The above said observations and conclusions by the Hon'ble High Court is complete answer to the contention raised on behalf of the respondent. Once document of leave and license agreement is in writing and its contents are proved by producing original leave and license agreement on record, there is no impediment in accepting it in evidence, particularly, on the ground that it has not been registered. As observed by the Hon'ble High Court, drastic consequences of non registration of document compulsorily registerable under Section 17 of Registration Act are not akin consequences provided under section 55 of the rent act.

Therefore, analogy and effect of non registration of the document contemplated under registration Act cannot be borrowed while dealing with unregistered lease and license agreement in proceeding for eviction.

22. In view of above said discussions, I do not find any merit in the defence which raised by the opponent that in the absence of registered instrument there was mutual tenancy agreement between applicant's deceased father and respondent, cannot be acceptable.

23. The Ld. Advocate of the opponent raised the defence that Small Cause Court granted injunction order on 05/04/2017 in RCS No. 102/2017 therefore this application is not maintainable. The opponent filed photocopy of plaint of RCS No. 102/2017 and certified copy of order below Exh. 5. On perusal of said order, the court passed the order that "*the defendants and their agents or servants or anybody acting on their behalf are hereby restrained by the way of ex-party interim injunction from disturbing peaceful possession of the plaintiff without following due process of law. Issue show cause notice to the defendants why ex party injunction granted in favour of the defendants should not be confirmed.*"

24. Now, the question arise that in view of this order whether this authority is barred to pass eviction order under Section 24 of the MRC Act. To resolve this question the observation made by the Hon'ble Gujrat High court in the case Kataria V/S Estate Special Civil Application No. 1687/2012 with Special Civil Application No. 1808/2012 decided on 10/04/2012 is helpful to this authority. In the said judgment, the



Hon'ble Gujrat High court in para No. 35 and 36 made following observations.

35. *In the light of the liberty granted by the trial court to the respondents to take action for dispossessing the petitioners in accordance with law, the order passed by the trial court can be reconciled with the provisions of section 10 of the PPE Act as discussed hereinabove. The trial court has thus given a lee way to the respondents for taking action in accordance with law. Accordingly, the respondents have resorted to the provisions of the PPE Act and the petitioners have participated in the said proceedings which resulted into passing of the orders of eviction by the estate officer. The appellate officer after appreciating the evidence on record has concurred with the findings recorded by the estate officer and has further on the basis of the provisions of the Warehousing Corporations Act come to the conclusion that the very allotment of the subject premises was without authority of law and as such, unauthorised.*

36. *In the opinion of this court, the scope of the proceedings before the trial court as well as the estate officer is different. Before the trial court, the petitioners had sought protection from forcible dispossession of the subject premises without taking action in accordance with law whereas proceedings before the estate officer were proceedings under the PPE Act for unauthorised occupation of the subject premises. It is true that the cause of action for instituting the suit were notices dated 14<sup>th</sup> February, 2011 calling upon the petitioner to vacate the subject premises on or before 7th March, 2011 and 31st January, 2011, respectively. However, the relief claimed is for a permanent injunction*

*restraining the defendants from forcibly dispossessing the petitioners and from taking over possession except in accordance with law. The trial court while granting interim injunction has observed that the apprehension of the petitioners that they may be forcibly evicted appears to be justified and it is in these circumstances that the trial court has granted temporary injunction pending the suit, while reserving liberty to the respondents to take possession in accordance with law. Possession in accordance with law, as observed hereinabove in respect of public premises would be under the provisions of PPE Act, hence, it cannot be said that the initiation of proceedings under the PPE Act are in conflict with or in violation of the order of the trial court.*

25. In the present case, the Hon'ble Small Cause Judge has passed order that the defendants, his agent and servant are hereby restrained by an order of interim injunction from disturbing the plaintiff's possession in the suit premises without following due process of law.

26. The scope of the proceedings before Hon'ble Small Cause Court is different than the present authority. In the case of license as per Section 47 of The Maharashtra Rent control Act, no Civil Court shall have jurisdiction in respect of any matter which Competent authority under this Act, to decide and no injunction shall be granted by any Court or other authority in respect of any action or to be taken in pursuance of any power so confirmed on the Competent Authority.

27. As per section 24 of the MRC Act, 1999 the landlord entitled to recover the possession of premises given on license on expiry of period.

The Competent Authority has jurisdiction to pass the eviction order on the basis of leave and license agreement against licensee. In the present case, there is leave and license agreement. Therefore, Competent Authority is having jurisdiction to evict the licensee. Prior to the suit No. 102/2017, the opponent filed RCS No. 569/2007 for the declaration and injunction. The said suit was decreed on 26/06/2008 and the court passed the order “*defendants are restrained by permanent injunction from dispossessing the plaintiff from the suit premises without due process of law.*” The defendants filed Civil Appeal No. 546/2008. The appellant court on 18/07/2011 passed the order that “*the judgment and decree passed in Civil Suit No. 569/2007 is set aside and civil suit stands dismissed. The appellant defendants are at liberty to take recourse of law for the recovery of possession from the opponent plaintiff.*” The said order was confirmed by the Hon’ble High court in Civil Revision Application No. 757/2011

28. On perusal of order (Exh.60) of Civil Revision Application 757/2011, wherein the Hon’ble High court has observed that the respondents i.e. present applicants will have to adopt due process of law for recovery of possession of the suit premise. It is obvious that the respondents will have to follow due process of law for evicting the applicant.

29. Due process of law means nobody ought to be condemned unheard. The due process of law means a person in settled possession will not be dispossessed except by due process of law. Due process means an opportunity for defendant to file pleading including written statement and

document before the court of law. Due process of law is satisfied the moment rights of the parties are adjudicated by the Competent Court.

30. By filing this application the applicants seek the relief of possession of the suit premise from the opponent. Notice was issued to the opponent and she appeared and filed her written statement and documents. The applicants being owner filed application for enforcement of their rights to eject the licensee, who is after expiry of leave and license is in unlawful possession of the suit premise. The said act of the applicants is lawful. The Hon'ble Small Cause Court has not prohibited to the applicants to take possession from the opponent by lawful means.

31. The above said question is decided in the case **Kataria Vs Estate, supra**, the ratio which laid down in said Judgment is applicable to present proceeding. Thus, in view of above discussions, I find that this authority has no bar to pass the order of eviction against the opponent.

32. During the cross examination of the applicant No. 2 and written statement (Exh.13), the opponent has raised the objection that the applicants have not filed succession certificate and there is no material on record to show that the applicants are legal heirs of the deceased Hiranand Chandnani.

33. The applicant No. 2 has deposed on affidavit that his mother Smt. Chandra Hiranand Chandnani and the applicants are the legal heirs of deceased Hiranand Chandnani. His mother Smt. Chandra Hiranand Chandnani executed release deed (Exh.54) in their favour. The copy of release deed is filed on the record, it supports the contention of the

applicants. There is no material on record apart from the applicants, anybody are the legal heirs of deceased. Therefore, only non filing of succession certificate is not sufficient to prove the plea of tenancy of the opponent. The applicant No. 2 has produced letter (Exh.48) issued by Parmar Park Co-operative Housing Society and Share certificate (Exh.49) which is given in favor of Shri. Hiranand Samandas Chandnani. From these documents it appears that the father of the applicants is the owner of the suit premise.

34. As per section 41 (c) of the MRC Act, the landlord means who is a person who has given the premises on license for residence or is successor –in –interest referred to in Section 24 of the MRC Act. After the death of their father, the applicants become landlord as successors-in-interest.

35. On perusal of Leave and license agreement (Exh 56), it is impounded and in writing and the suit premise was let on license for residential purpose. Needless to say that the applicants, being legal heirs of deceased are owner of the suit premise. The legislature has provided that provision of section 24 of The MRC Act would apply to the premises given on license for residential purpose and also that agreement of leave and license in writing shall be conclusive evidence of the facts stated therein. In the present case, leave and license agreement (Exh.56) is impounded and in writing. Therefore, it is conclusive evidence of facts stated therein as per **section 24 - Explanation (b) of MRC Act**. The document is sufficient to prove the fact that there is leave and license

agreement between applicant's father and opponent in respect of suit premises and they are having relationship as licensor and licensee. The period of license is expired on 14/04/2003. With these findings I answer to Issues No. 1 to 3 in the affirmative.

**As to issues No 4 to 6 collectively: -**

36. All these three issues are interconnected to each other. Therefore, to avoid repetition of facts and evidence, I have discussed them collectively. The applicants are claiming relief of possession of suit premise and damages. As per Section 24 of the MRC Act, the landlord shall entitle to recover possession of licensed premises by making application to this authority and on expiry of such license period, order of eviction can be passed. Admittedly, the opponent has been in possession of the suit premise. The period of license was expired on 14/04/2003. Father of applicants issued notice (Exh.52) for vacating suit premises. In spite of receiving notice, the opponent did not handover the peaceful possession of suit premise to the applicants. There is consistent pleading that suit premise was given on leave and license and same had expired on 14/03/2003. At the moment license granted came to an end, this authority is empowered to pass order of eviction and landlord shall be entitled to recover possession of licensed premise.

37. The opponent raised the defence that after 15 years of expiry of the license period, the present application is filed which is barred by limitation. On perusal of section 24 and 42 of The MRC Act, there is no mention period for making an application to the Competent Authority by

the landlord to evict the licensee. **In the case Prakash H. Jain Vs M/s Marie Fernandes 2003 AIR SCW, the Hon'ble Supreme Court** has held that, *“the Competent authority is not a court, the authority has limited scope and specific purpose under the act and it cannot be deemed to be a court for invoking section 5 of Limitation Act.”*

38. **In case of Sudha Rajendra Mahajan and others vs Vikas Narayan and others (2024) 07 BOM CK0029, writ petition No. 1432/24 decided on 08/07/2024, the Hon'ble Bombay High Court** to contents that *pertinently no limitation is prescribed under Rent Act for institution of proceeding for eviction before Competent Authority under Section 42 of the Act. Under section 39, Chapter VIII and Rule made there under is giving overriding effect. Special procedure for disposal of the application is prescribed under section 43 of the Rent Act. Finality is given to the orders passed in Revision. Therefore, MRC Act, 1999 is complete code in itself and general provisions of Limitation Act can not be derived. Once Chapter VIII stands apart distinctly and diverse from the rest of the Act or any other law in force having its independent procedure. Provision of the limitation Act, 1963 would not attract to the proceeding before Competent Authority.*

39. In the present case, the opponent filed Civil Suit No. 569/2007 which was decreed. Thereafter the applicant's father filed Civil Appeal No. 546/2008. The appellant court on 18/07/2011 passed the order that *“the judgment and decree passed in Civil Suit No. 569/2007 is set aside and civil suit stands dismissed. The appellant defendants are at liberty to*

*take recourse of law for the recovery of possession from the opponent plaintiff.”* The said order was confirmed by the Hon’ble High court in Civil Revision Application No. 757/2011. In such circumstances and the ratio laid down in Judgment of Prakash Jain and Sudha Mahajan (supra), the plea of the opponent that the application is barred by limitation is not acceptable. Thus, the applicants are entitled to vacant possession of the suit premise from the opponent.

40. The section 24 says the damages at the rate of double of license fees or as fixed by the parties can be granted. The leave and license agreement is expired by efflux of time on 14/04/2003. As per section 24(2), after the expiry of period of license, the applicants are entitled to get damages at double the license fees. On perusal of leave and license agreement (Exh.56), the monthly license fees is of Rs. 7,000/-. Thus, the applicants are entitled to damage at double the rate of license fee i.e. Rs. 14,000/- from 15/04/2003 after adjusting security deposit of Rs. 60,000/- received by the applicant from the opponent. From the documents it appears that the opponent deposited license fees in regular Civil Suit No. 102/2017 and execution petition No. 85/2015. Both the parties failed to brought on record how much exact amount of license fees was paid by the opponent. However, whatever amount which paid and deposited by the opponent be adjusted while calculating damages amount. Hence for this reason I record my findings as to Issues nos. 4 and 5 in the affirmative and in answer of Issue No. 6, I pass following order.-



**ORDER**

1. The application is partly allowed.
2. The opponent is hereby directed to handover vacant and peaceful Possession of application premises “Flat No. 205 (also numbered as 225 E) admeasuring about 1215 Sq. Ft., second floor, Maple Court, Parmar Park Co-operative Housing Society Ltd, Survey No. 77/48/1A and 77/71 (A and B) of village Wanorie, Taluka Haveli, District Pune” within 30 days from the date of this order to applicants.
3. The opponent is directed to pay damages to applicants at the rate of Rs. 14,000/- Per month (7,000 x 2 = 14,000/-) from 15/04/2003 till handover the vacant possession of suit premises after deducting paid and deposited amount by the opponent and security deposit of Rs. 60,000/- from it.

**Date :** 05.11.2024

**Place:** Pune

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