

Presented on : 17.12.2021.
Registered on : 13.01.2022
Decided on : 09/05/2022
Duration : 0Y 5M 26D

**IN THE COURT OF COMPETENT AUTHORITY RENT
CONTROL ACT COURT, NASHIK DIVISION, AT NASHIK.**

(Presided over by Shri. S.D.Wankhede)

APPLICATION NO. 18 OF 2021

Exh. No.9.

Shri. Devendra Harnarayan Agrawal

Age : 48 years, Occupation : Business,
Residence : Yathartha Bunglow,
Rameshwar Nagar, Anandwali,
Tal. Dist.Nashik

..... **Applicant.**

..**VERSUS**..

Shri. Vijay Motiram Borade,

Age :46 years, Occu. : NIL.
Residence : Flat No.305, Third floor,
Bhumica A Apartment,
Opposite Potadar International School,
Tapovan Link Road,
Nashik Tal. Dist. Nashik.

..... **Respondent.**

Claim : Application for Recovery of Possession and damages.

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Shri. Avinash S. Bhosale : Advocate for applicant
: Respondent : Ex-Parte.
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J U D G M E N T

(Delivered on 9th day of May,2022)

1. This is an application filed Under Section 24 of the Maharashtra Rent Control Act, 1999, (hereinafter referred as "the Act" for the sake of brevity) to recover the

vacant and peaceful possession of Flat No.305, Third floor, Bhumica A Apartment, Opposite Potadar International School, Tapovan Link Road, Nashik, Tal. Dist. Nashik (hereinafter referred as the 'application premises' for the sake of brevity), arrears of license fee and damages.

2. The facts of the applicants case, in brief, are as follows:-

The applicant is the absolute owner of the application premises. It is contention of applicant that as per the request of the respondent the leave and license Dtd.23/04/2019 was executed between the applicant and respondent in respect of application premises for a period of 11 months. The period of leave and license agreement was commencing from 01/04/2019 and ending on 29/02/2020. The license fee was fixed at the rate of Rs. 7,500/- Per month with Rs.30,000/- as a security deposit.

3. It is a further contention of applicant that the respondent had paid the license fee till the month of Dec. 2019. The respondent failed to pay license fee for the month of January 2020. It is further contention of applicant that before expiry period of leave and license agreement the applicant informed the respondent to pay arrears of license fee of 2 months i.e. Rs.15,000/- and returned back his security amount. The respondent requested to grant 1 to 2 months extension for handing over the possession of the application premises. The

period of leave and license agreement expired by efflux of time. After the expiry period of leave and license agreement the respondent failed to pay arrears of license fee and also failed to handover the vacant and peaceful application premises. Therefore, the applicant through his Adv. sent notice on Dt.27/09/2021 to respondent. The said notice is received by the respondent on Dt. 29/09/2021. Though the said notice is issued, but respondent failed to pay arrears of license fee and also failed to handover the vacant and peaceful possession of the application premises. Hence, the applicant constrained to file this application.

4. The summons (Exh.7) sent through R.P.A.D. to respondent on correct address. The summons sent to respondent, the envelope received back bearing remark 'Unclaimed, returned to sender'. The closed envelop is at Exh.8. As in the case of **K. Bhaskaran Vs. Sankaran Vaidhyan Balan and Anr.**, the Hon'ble Supreme Court, held that a notice returned as unclaimed is presumed to have been served. The ratio laid down in the case cited supra does squarely apply to the facts of the instant case. In the instant case also, summons issued to respondent by R.P.A.D. on correct address is received as 'Unclaimed, returned to sender'.

5. The respondent remained absent should have not filed application for leave to defend as per section 43(4)(a) of the Act. In such circumstances and facts as per section 43(4)(a) of the Act failure to appear and seek

leave to defend in pursuance to the same within 30 days from the service of summons, the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant or the licensee as the case may be and the applicant shall be entitled to an order for eviction on the ground aforesaid.

6. Further as per explanation (b) to Section 24 of the Act, agreement in writing is conclusive evidence of facts stated therein. In the circumstances so as to attract Section 24 of the Act, the basic ingredients of relationship as licensor and licensee, period of license, nature of license, its expiry, premises, ownership etc. have to be taken into account. In the case in hand there is written and registered leave and license agreement. The applicants have filed original copy of leave and license agreement dated 23/04/2019. On perusal of leave and license agreement it reveals that the applicant is the licensor and the respondent is licensee. The period of license is expired by efflux of time. Therefore, the applicant is complied mandatory requirements of Section 24 of the Act.

7. In continuation to this as per Section 55(1) of the Act any agreement for leave and license shall be in writing and shall be registered under the Registration Act, 1908. In the present case the leave and license agreement is registered with Sub Joint Sub-Registrar Nashik-5.

8. Apart from this, as per explanation (b) to Section 24 of the Act the agreement in writing shall be conclusive evidence of facts stated therein. Therefore, in view of the verdict of the Hon'ble High Court in case of **Amit Dalal Vs. Rajesh Doctor reported in 2010(7) Mh.L J 1** the necessary order needs to be passed by the Competent Authority on expiry of the period of license. In the case in hand the respondent failed to vacate the application premises after the expiry period of leave and license agreement. Therefore, the applicant is entitled for possession of application premises.

9. As per Sec.24 (1) (2) of the Act the licensor got the right to evict the licensee from the premises on expiry of the period of license failure to vacate the premises by licensee along with damages. The Hon'ble High Court in the case of **Geeta N. Shivdasani Vs. Niraj T. Sharma & others., reported in 2009(4) All MR 821** held that **“once it is established that Agreement of Leave and License is in writing, the courts cannot take into intention of parties and if period of the License has expired, the Competent Authority is statutorily obliged to pass an order of 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.”** The ratio laid down in the case cited supra does squarely apply to the facts of the instant case. In the instant case also, there is written and registered leave and license agreement. The period of leave and license

agreement is expired by efflux of time.

10. In this regard the averments made in application reveals that after the expiry period of leave and license agreement the respondent is in possession. However, the respondent did not vacate the application premises.

11. On above discussion as per sub-section 2 to Section 24 of the Act on expiry of the period of license the continuous possession on the part of respondent or licensee become illegal and liable to pay the damages at the double rate of fixed license fee. In the present case after the expiry period of leave and license agreement the possession of the application premises withheld by the respondent become illegal and for that needs to be imposed damages as per the statutory provision upon the respondent /licensee.

12. As per Explanation (b) of Section 24 of the Act, an agreement of license in writing shall be conclusive evidence of the fact stated therein. Accordingly, the applicants have complied the mandatory requirements of the section 24 of the Act. So also brought on record the continuous possession after the expiry period of agreement so as to claim the damages.

13. It is a contention of applicants are that the respondent was in arrears of license fee a sum of Rs.15,000/-. Therefore the applicant is entitled for

arrears of license fee of Rs.15,000/-. It is further contention of applicant that, after the expiry period of leave and license agreement that is from 01/03/2020, the respondent was failed to handover the vacant and peaceful possession of the application premises, therefore from 01/03/2020 the possession of the respondent upon application premises is unauthorized, illegal. Therefore, as per Sub-section 2 of Section 24 of the Act, the applicant is entitled for license fee at the double rate of agreed license fee i.e. Rs.7,500 X 2 =15,000/- p.m. from 01/03/2020 to till the respondent handover the vacant and peaceful possession of the application premises to him.

The sum and substance of my aforesaid findings, leads may to pass the following order.

ORDER

- I. The application is allowed.
- II. The respondent is hereby directed to hand over vacant and peaceful possession of Flat No.305, Third floor, Bhumica A Apartment, Opposite Potdar International School, Tapovan Link Road, Nashik Tal. Dist. Nashik within 30 days to the applicant.
- III. The respondent is further directed to pay arrears of license fee a sum of Rs. 15,000- within 30 days to the applicant.
- IV. The respondent is further directed to pay a license fee at the double rate i.e. 7,500/-X 2 =15,000/- per month from 01/03/2020 till handing over the possession of application premises to the applicant as damages.

V The applicants are liberty to appropriate the amount of security deposit if any.

Pronounced in open Court.

Station : Nashik.

Date : 09/05/2022

(S.D.Wankhede)
Competent Authority,
Rent Control Act Law Court,
Nashik Division, Nashik.

Rent Control Act Court Nashik