

Presented on : 07.01.2022
Registered on : 07.01.2022
Decided on : 09.05.2022
Duration : 00Y04M02D

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

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

EVICITION APPLICATION No. 02 OF 2022

Exh. No.13

Shri Dyneshwar Digamber Bahirwade,

Age : 71 years, Occu. : Retired,
Residing at Shivkrupa, Plot No. 32/1,
Rasane Nagar, Savedi,
Tq. and District Ahemdnagar.

..... **Applicant.**

..**VERSUS.**..

Shri Bhausahab Mahadev Ransing,

Age : 30 years, Occu. : Service,
Presently residing at Shivkrupa,
Plot No. 32/1, Rasane Nagar,
Savedi Tq. And District Ahemdnagar. **Respondent.**

**Claim : Application Under Section 24 of the Maharashtra
Rent Control Act, 1999.**

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Mr. Salil Arvind Pandit : 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 to as “the Act” for the sake of brevity) to recover the vacant and peaceful possession of all the part and parcels of Non Agricultural Plot No. 32/1, adm. 147.05 and construction made thereon of 52.52 sq. mts. Out of Survey No. 14/1A in part situated at Savedi except one room within the limits of Ahemadnagar Municipal Corporation Ahemadnagar is

bounded as under towards the East : Plot NO. 39 and 40, towards the South: Plot No. 31/2, towards West: 50 feet road, and towards North : Plot No. 32/2 (hereinafter referred to as the 'application premise' for the sake of brevity) arrears of license fee and damages.

2. The facts of the applicant's case, in brief, are as follows:-

The applicant is the owner of the application premises. It is a contention of applicant that the respondent was permitted to use and occupy the application premises on leave and license basis for a period of two years. Accordingly, on 15.06.2016 the leave and license agreement was executed. The license fee was fixed at the rate of Rs.7,500/- per month with Rs.25,000/- as security deposit.

3. It is a pertinent to note that after the expiry period of leave and license agreement, respondent failed to vacate the application premises. According to applicant, they settled that after the expiry period of one year, the license fee was paid at the rate of Rs.8,000/- per month. As per consent the respondent paid license fees from 16.08.2017 to 15.09.2018 to the applicant. It is a further contention of applicant that the period of leave and license agreement was expired on 15.06.2018. After the expiry period of leave an license agreement the respondent failed to pay license fee and also failed to handover vacant and peaceful possession of the application premises. Therefore, the applicant through his Advocate sent legal notice dated 17.12.2018 to respondent and called upon to pay arrears of license fee and also handover vacant and peaceful possession of the application premises. The said notice received by the

respondent, but failed to comply and reply the same. Hence, the applicant filed Regular Civil Suit No. 170 of 2019 before the civil court, in which the plaint is returned. Hence, applicant constrained to file present application.

4. The summons (Exh.7) was sent to respondent through R.P.A.D. on correct address. The said summons is returned back as Unclaimed. The postal article containing summons 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 to respondent sent by R.P.A.D. on correct address is received as 'Unclaimed'.

5. Thereafter, the respondent remain absent reason best known to him and should 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. Considering the nature of proceeding it is summary under chapter VIII of the Act for the speedy disposal of controversy in between licensor and licensee in respect of specific premises given for specific period.

7. 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 etc. have to be taken into account. In the case in hand there is a written and registered leave and license agreement. The applicant filed original copy of leave and license agreement on record. On perusal of leave and license agreement dated 13.06.2016 it reveals that the applicant is licensor and the respondent is licensee. The period of license is expired by efflux of time. Hence, the applicant complied mandatory ingredients of the Section 24 of the Act.

8. 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 Joint Sub Registrar Ahemadnagar-1.

9. As per Sub Section 1 & 2 of Section 24 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 & ors., 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 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 of Section 24 of the Act on expiry 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 agreed license fee. In the present case after the expiry period of leave and license agreement the possession of the application premises with held 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 applicant has complied the mandatory requirements of the Section 24 of the Act, so also brought on record the continues possession after the expiry period of leave and license agreement so as to claim the damages. It is a contention of applicant that the respondent has license fee till 15.09.2018. It is a further contention of applicant that the applicant is entitled for arrears of license fee a sum of Rs.6,30,000/- till filing of the

present application. According to own contention of applicant that the period of leave and license agreement is expired on 15.06.2018. The applicant received license fee till 15.09.2018. Therefore, the applicant is not entitled for arrears of license fee.

13. It is a further contention of applicant that after filing civil suit the applicant is entitled for license fee from respondent. When the period of leave and license agreement is expired on 15.06.2018 by efflux of time. Therefore, the applicant is entitled for license fee at the double the agreed license fee i.e. $8,000 \times 2 = 16,000/-$ per month from 15.06.2018 to till handover the vacant and peaceful possession of application premises from the respondent. The applicant is also entitled for vacant and peaceful possession of the application premises from the respondent. Hence, I pass the following order:

ORDER

- i.** The application is allowed.
- ii.** The respondent is directed to hand over vacant and peaceful possession of all the part and parcels of Non Agricultural Plot No. 32/1, adm. 147.05 and construction made thereon of 52.52 sq. mts. Out of Survey No. 14/1A in part situated at Savedi except one room within the limits of Ahemadnagar Municipal Corporation Ahemadnagar is bounded as under towards the East : Plot NO. 39 and 40, towards the South: Plot No. 31/2, towards West: 50 feet road, and towards North : Plot No. 32/2 within 30 days to the applicant.
- iii.** The respondent is further directed to pay license fee at the double i.e. $8,000 \times 2 = 16,000/-$ per month from 15.06.2018

to till handover the vacant and peaceful possession of the application premises as damages.

- iv.** The applicant at liberty to appropriate the security deposit, if any.

Station : Nashik
Date : 09.05.2022

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

Rent Control Act Court, Nashik