

Presented on :15/12/2020.
Registered on : 31.12.2020.
Decided on : 09/05/2022
Duration : 1Y 5M 23D

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

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

APPLICATION NO. 10 OF 2020

Exh. No. 14.

1. Shri Santosh Fathechand Jain,

Age : 44 years, Occupation : Service,
Residence : Shriniwas Complex,

2. Smt. Ranu Santosh Jain,

Age : 39 years, Occupation : Household,
Both are residing at : Flat No.A-102,
Giridhar Oacis Society,

Thite Nagar, Khardi, Pune-411014. Applicants.

..VERSUS..

Shri. Ashok Jaichandra Za,

Age :54 years, Occu. : Business,
Residence : **1)**Building No.15,
Block Sector, Thane East Road,
Near Maruti Jeem, Thane 400603,
2) Presently residing at Flat No.2,
Ground floor, Raj Apartments,
Near Viral Park, Shankar Nagar,
Takali Road, Dwarka,Nashik 4220011 .. Respondent.

Claim : Application for Recovery of Possession and damages.

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Shri. P. A. Malpani :Advocate for applicant
Respondent : Ex-Pare.
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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.2, Ground Floor, Raj Apartment, Survey No. 441/B/1, Tal. and Dist. Nashik, House No.821/3720/RA/002, admeasuring about 1350 Sq. Ft. consisting of hall + Two rooms + Hall + kitchen with W. C. Bath, Taluka Dist. Nashik, within the limits of Nashik municipal Corporation (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 applicants are the absolute owner of the application premises. It is contention of applicants are that in the month of April 2018 the respondent approached to the applicant and requested to permit him to use and occupy the application premises on leave and license basis for a period of 11 months. Accordingly, on 26/04/2018 the leave and license agreement was executed. The period of leave and license agreement was commencing from 01/05/2018 and ending on 31/03/2019. The license fee was fixed @ 15,000/- Per month.

3. It is a further contention of applicants that the the period of leave and license agreement Dtd. 26/04/2018 was expired on 31/03/2019 by efflux of

time. After the expiry period of said leave and license agreement as per the request of the respondent the fresh leave and license agreement Dtd.18/02/2019 is executed between the applicant No.2 and respondent for a period of 24 months. The period of fresh leave and license agreement was commencing from 01/04/2019 and ending on 31/03/2021. The license fee was fixed at the rate of 16,500/- p.m. for the first 12 months and Rs.18,000/- per month for the last 12 months with Rs.50,000/- as interest free security deposit.

4. It is further contention of applicants that the respondent paid regularly license fee for a period 01/04/2019 to 31/10/2019. Thereafter, from 01/11/2019 the respondent failed to pay license fee to the applicant. Therefore, the applicant sent notice Dtd. 31/07/2020 to respondent through What sap for termination of leave and license agreement and also called upon to pay arrears of license fee 1,36,000/- with handing over the peaceful possession of the application premises. The respondent failed to comply and reply the said notice. Thereafter again the applicants sent notice Dtd. 22/09/2020 through What sap and called upon the respondent to pay arrears of license fee Rs.1,54,000/-. The respondent also failed to comply and reply the said notice. Therefore, lastly the applicant sent notice Dtd. 12/11/2020 through R.P.A.D. to respondent for arrears of license fee and vacant and peaceful possession of application premises. But said notice is returned back

as insufficient address. The respondent has committed the breach of leave and license agreement, therefore the applicant is entitled for possession of application premises. Despite notices, oral request, the respondent failed to pay arrears of license fee and also fails to handover the vacant and peaceful possession of the disputed premises, hence applicants constrained to file this application.

5. The summons (Exh.9) were sent to respondent through R.P.A.D. on both correct address. The Summons sent on the address of application of premises is returned back as intimation Dtd. 17/02/2021. The Article containing Summons is at Exh.11. The Summons sent on the alternate address is returned back as addressee left. The postal articles containing Summons is at Exh.10. Thereafter, as per the request of applicant the Summons (Exh.13) sent to the respondent through this Authority. The staff of this Authority duly pasted the copy of the Summons on the conspicuous part of the application premises on 30/03/2022. After the duly pasted the copy of Summons on the application premises the respondent failed to appear before this Authority reason best knows him.

6. Thereafter respondent remained absent and 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 applicants shall be entitled to an order for eviction on the ground aforesaid.

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, 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 28/02/2019. On perusal of leave and license agreement it reveals that the applicant No.2 is the licensor and the respondent is licensee. The period of license is expired on 31/03/2021 by efflux of time. It is a contention of application that respondent failed to pay license fee therefore , the applicants sent termination notice Dtd. 31/07/2020 through What sap to the respondent. Thereafter again the applicant sent notice Dtd. 22/09/2020 through What sap to the respondent and called upon to pay arrears of license fee and handover the vacant and peaceful possession of the

application premises. But nothing is on record to show that the applicant sent these notices through What sap. It is further contention of applicant that, thereafter again she sent notice Dtd. 12/11/2020 to respondent through R.P.A.D. and informed the leave and license agreement is terminated as per the notice Dtd. 31/07/2020 and called upon the respondent to handover the vacant and peaceful possession of application premises. The said notice is returned back as insufficient address. After the termination of leave and license agreement respondent failed to comply legal notice issued by the applicant, hence, as per clause 10 of the leave and license agreement the applicant rightly terminated leave and license agreement by issuing one months' notice. Hence applicants are complied mandatory requirements of 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 Sub Joint Sub-Registrar, Nashik-5.

9. 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 termination of leave and license agreement. Therefore, the applicants are entitled for possession of application premises.

10. 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 termination as well as efflux of time.

11. 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.

12. 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 agreed license fee. In the present case after the termination 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.

13. 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 termination of agreement so as to claim the damages.

14. It is a contention of applicants are that the respondent was in arrears of license fee a sum of Rs.1,54,,000/- i.e. for a period 01/11/2019 to 30/08/2020. Therefore the applicants are entitled for

arrears of license fee of Rs.1,54,,000/-. It is further contention of applicants that, after the termination of leave and license agreement i.e. from 01/09/2020 (i.e. after expiry period of 1 months of termination notice) the respondent was failed to handover the vacant and peaceful possession of the application premises, therefore from 01/09/2020 the possession of the respondent upon application premises is unauthorized, illegal. Therefore, as per Sub-section 2 of Section 24 of the Act, the applicants are entitled for license fee at the double rate of license fee i.e. Rs.16,500 X2 =33,000/- p.m. from 01/09/2020 to till handover the vacant and peaceful possession of the application premises from the respondent.

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.2, Ground Floor, Raj Apartment, Survey No. 441/B/1, Tal. and Dist. Nashik, House No.821/3720/RA/002, admeasuring about 1350 Sq. Ft. consisting of Two rooms + Hall + kitchen with W.C.Bath, Taluka Dist. Nashik, within the limits of Nashik municipal Corporation within 30 days to the applicants.
- III. The respondent is further directed to pay arrears of license fee a sum of Rs. 1,54,000/-within 30 days to the applicants.

- IV. The respondent is further directed to pay a license fee at the double rate i.e. 16,500/-X 2 =33,000/- per month from 01/09/2020 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