

Presented on : 24.11.2021.
Registered on : 30.11.2021
Decided on : 09/05/2022
Duration : OY 5M15D

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

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

APPLICATION NO. 16 OF 2021

Exh. No.

Shri. Shripad Madhusudan Joshi,

Age : 53 years, Occupation : Govt. Service,
Residence : Shivpuri Ro-house No.8,
Javeheri Colony, Motwani Road,
Nashik Road, Nashik.

..... **Applicant.**

..**VERSUS**..

Shri. Dhananjay Narsappa Telangi,

Age :46 years, Occu. :Service,
Residence : 7-A, Ashirwad,
Suyog Nagar, Canal Road, Jail Road,
Nashik Road, Nashik

..... **Respondent.**

**Claim : Application for Recovery of Possession and
damages of license fee under Section 24.**

.....
Bhushan K. Bajpayee : Advocate for applicant
Respondent : Ex-Parte.
.....

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 kitchen + Hall + WC + bathroom with light and water connection on first floor in

constructed "Ashirvad Bunglow", Survey No.36/2B, Plot No.7A, Dasak gaon, Tal. 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 applicant case, in brief, are as follows:-

The applicant is the absolute owner of the application premises. It is a contention of applicant that he is serving in Currency Note press Nashik Road, having his Identity Card. The applicant is absolute owner of the application premises. Accordingly, leave and license agreement held between applicant and Respondent for temporary residence in application premises on license fee of Rs.2,800/-p.m.. The period of leave and license agreement was for 11 months and it was commencing from 01/07/2020 and ending on 31/05/2021 and it was notarized at Sr.No.1979/2020, on Dt. 01/07/2020 before the Adv. Notary Shri. Suhash Ramchandra Pathak and it bears signatures of applicant, opponent and two witnesses.

3. It is a further contention of applicant that, the respondent have not vacated the application premises on Dt.31/05/2021 after the expiry period of leave and license agreement and not paid the arrears of license fee and Elect. bill, that time the first cause of action arose. The applicant issued notice through Adv. Bhushan K. Bajpayee on Dt.22/07/2020, with a demand to pay arrears of license fee Rs.19,600/- with arrears of light bill and other

expenses. The respondent have received the same, but respondent did not acted as per the demand of the notice and have failed to handover the application premises to the applicant. Hence, applicant constrained to file this application.

4. The summons (Exh.7) issued through R.P.A.D. to respondent on correct address. The Summons duly served to respondent. The Postal Ack. is at Exh.8. Though the Summons duly served to the respondent, but the respondent failed to appear and should have not filed leave to defend as per Section 43(4)(a) of the Act.

5. In such circumstances and facts as per the 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 landlord in the application for eviction shall be deemed to be admitted by the tenant or licensee as the case may be and the applicant shall be entitled to an order for eviction on the ground aforesaid.

6. 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.

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 applicant has filed original copy of leave and license agreement dated 01/07/2020. On perusal of leave and license agreement dated 01/07/2020 it reveals that 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.

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 not registered. As the Hon. High Court in case **Raj Kondur Vs. Arif Taher Khan and others reported in 2005 (4) Bom. C.R. 383** held that '**The provision of Maharashtra Rent Control Act, 1999 would prevail over the Registration Act in view of Section 24 explanation (b)**'. The ratio laid down in the case cited Supra does squarely apply to the fact of the case in hand. In the case in hand also there is no registered leave and

license agreement. As per verdict of the above cited Supra Case there is no need to register the leave and license agreement.

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 the expiry period 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 leave and license agreement. The period of leave and license agreement is expired by efflux of time.

11. In this regard the averments made in application reveal 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 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.

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 expiry period of agreement so as to claim the damages.

14. It is a contention of applicant that the

respondent was in arrears of license fee Rs. 2,800/- p.m. from last 7 months of leave and license agreement Rs.19,600/-. Therefore, the applicant is entitled for arrears of license fee of Rs.19,600/- and also entitled for license fee at the double rate i.e. Rs.2,800/- X 2 = 5,600/- per month from the respondent from 01/06/2021 to till handover the vacant possession of application premises. Hence, I pass the following order:

ORDER

- I. The application is allowed.
- II. The respondent is hereby directed to hand over vacant and peaceful possession of kitchen + Hall + WC + bathroom with light and water connection on first floor in constructed "Ashirvad Bunglow", Survey No.36/2B, Plot No.7A, Dasak gaon, Tal. Dist. Nashik, within the limits of Nashik municipal Corporation, within 30 days to the applicant
- III. The respondent is further directed to pay the arrears of license fee a sum of Rs.19,600/- within 30 days to the applicant.
- IV. The respondent is further directed to pay a license fee at the double rate i.e. 2800/-X 2 = 5,600/- per month from 01/06/2021 till handing over the possession to the applicant as damages.

Station :

Date :

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