

Presented on : 24.11.2021.
Registered on : 30.11.2021
Decided on : 09/05/2022
Duration : 0Y 5M 15D

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

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

APPLICATION NO. 15 OF 2021

Exh.No.14.

Shri Shantanu D. Pashankar,,

Age : 45 years, Occupation : Business,]

C/o. Dhananjay Pashankar

Residence : 364-365/10, In front of Hotel Regent

Shivaji Nagar, Pune-4110025.

Mob. No.9860328590.

..... **Applicant.**

..**VERSUS**..

Shri. Manish Brijlal Kasat,

Age :55 years, Occu. :Medical Practitioner,

Residence : Flat No.2, Wing B,

Sumangal residency, Mahatma Nagar,

Nashik- 422007.

Mob.No.97822032689

..... **Respondent.**

Claim : Application for Recovery of Possession and damages.

.....
Pranita L.Joshi (Kulkarni): Advocate for applicant

Respondent : ----
.....

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, Wing B, adms. about 1750 Sq. Ft. consisting of hall + three rooms + kitchen + WC + bathroom + balcony, stilt floor, Sumangal Residency, Mahatma Nagar, Nashik-422007, 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 the applicant had purchased the application premises from Naresh Tulsian by registered agreement to sale bearing document No.9232/2006 Dt. 28/12/2005. Accordingly, leave and license agreement held between applicant and Respondent in the year 2016-17. After laps of this period thereafter again on Dt. 02/07/2018 the leave and license agreement was executed for 12 months. The period of leave and license agreement was commencing from 06/07/2018 and ending on 05/07/2019 and it was notarized Sr.No.507/2018, on Dt. 02/07/2018 before the Notary Shri. Namdeo S. Gite, Nashik. The respondent was under an obligation and duty to pay Applicant a monthly license fee of Rs. 16,000/- p.m. within first five days of the concern month.

3. It is a further contention of applicant that as per the point No.10 of the agreement after expiry of period of license the respondent was under a duty to vacate and

handover the possession of the application premises, failing it applicant will be entitled to recover damages at double the rate of license fee. Respondent did not pay monthly license fee from November 2018 till 05/07/2019, and after expiry of license period i.e. 05/07/2019 the respondent have not paid license fee and not vacated the application premises to the applicant. The respondent illegally holding the licensed peremises from 06/07/2019. So, applicant issued notice through Adv. More to respondent on Dt.11/08/2020, but respondent did not acted as per the demand of the notice and have failed to handover the application premises to the applicant and not paying him the license fee. Again applicant on Dt. 20/08/2021 issued notice through Adv. Chetan Hiralal Deshmukh, but the envelop of the said notice was returned back to the applicant's Adv. with a remark "Not claiming returned to sender".

4. It is a further contention of applicant that after getting knowledge of applicant's notice Dt.11/08/2020 the opponent did not acted as per the notice. The cause of action first arose on November 2018 when the respondent did not pay the monthly license fees as mutually decided between the applicant and respondent and after the expiry period of leave and license agreement the respondent failed to vacate the application premises and not paid the dues amount. Hence, applicants constrained to file this application.

5. The summons (Exh.7) issued through

R.P.A.D. to respondent on correct address. The summons send to respondent, the envelope received back bearing remark 'Unclaimed, returned to sender'. The closed envelops are at Exh.10. And the Show cause Notice (Exh.11) for say to Interim Injunction application issued through R.P.A.D. to respondent on correct address. The show cause notice send to respondent, the envelope received back bearing remark 'Unclaimed, returned to sender'. The closed envelops are at Exh.13. 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 are received as 'Unclaimed, returned to sender'.

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 02/07/2018. On perusal of leave and license agreement dated 02/07/2018 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 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 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.16,000/- p.m. from November 2018 to 05/07/2019 i. e. for 9 months Rs.1,44,000/-. Therefore the applicant is entitled for arrears of license fee of Rs.1,44,000/- and also entitled for

license fee at the double rate i.e. Rs.16,000/- X 2 = 32,000/- per month from the respondent from 06/07/2019 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 Flat No.2, Wing B adms. about 1750 Sq. Ft. consisting of hall + three rooms + kitchen + wc + bathroom + balcony, stilt floor, Sumangal Residency, Mahatma Nagar, Nashik-422007, within the limits of Nashik municipal Corporation, within 30 days to the applicant.
- III. The respondent is further directed to pay a arrears of license fee a sum of Rs. 1,44,000/-within 30 days to the applicant.
- IV. The respondent is further directed to pay a license fee at the double rate i.e. 16,000/-X 2 =32,000/- per month from 06/07/2019 till handing over the possession to the applicant as damages.
- V. The applicant is liberty to appropriate the amount of security deposit if any.

Station : Nashik.

Date : 09/05/2022

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