

Presented on : 06.01.2022.
Registered on : 13.01.2022
Decided on : 09/05/2022
Duration : 0Y 4M 3D

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

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

APPLICATION NO. 1 OF 2022

Exh. No. 10

Shri. Manoj Raghunath Savkare,

Age : 40 years, Occupation : Service,
Residence : Room No.4,
Vinanagar, Near Vegetable Market,
Khopoli, Tal. Khalapur,
Dist.-Raigad.

..... **Applicant.**

..**VERSUS**..

Shri. Anil Mohanlal Kumavat,

Age :49 years, Occu. : Service,
Residence : Flat No.6, First floor,
Dheeren Apartment, Shanti Park,
Upnagar, Nashik.

..... **Respondent.**

Claim : Application for Recovery of Possession and damages.

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Shri. Dinesh K.Shinde :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 Flat No.6, Ground

floor, Dhiren Apartment, Shanti Park, Upnagar, Nashik Road, House No.823/0081/035/A, Tal. Dist. Nashik within the limits of Nashik Mun. 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 contention of applicant that as per the request of the respondent the leave and license agreement was made on Dtd.30/07/2021 and it was executed on Dt. 03/08/2021 between the applicant and respondent in respect of application premises for a period of 11 months. The said leave and license agreement was registered at Sr. No.7579/2021. The period of leave and license agreement was commencing from 01/04/2021 and ending on 28/02/2022. The license fee was fixed at the rate of Rs. 4,700/- Per month with Rs.5,000/- as a security deposit.

3. It is a further contention of applicant that the respondent failed to pay license fee from 01/04/2021 to 01/08/2021 for 5 months of Rs. 23,500/. It is further contention of applicant that the respondent written informed the applicant that, he will pay arrears of license fee till 15/09/2021 i.e. Rs.23,500/- but he failed to pay the license fee, therefore the applicant through his Adv. sent notice, Dtd. 23/09/2021 through his Adv. and called upon respondent to pay arrears of license fee.

Despite the said notice, request respondent failed to pay arrears of license fee and also failed to handover vacant and peaceful possession of the application premises. Hence, the applicant constrained to file this application.

4. The summons (Exh.8) sent through R.P.A.D. to respondent on correct address. The postal Ack. is at Exh.9. On perusal of said Postal Ack. it appears that the said Summons duly served upon respondent on 21/02/2022. Thereafter the respondent remained absent before this Authority, reasons best known to him.

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 30/07/2021. 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 on Dt. 28/02/2022 by efflux of time. It is a contention of applicant that the respondent failed to pay license fee from 01/04/2021, therefore the applicant issued termination notice Dtd.23/09/2021 and called upon respondent to pay arrears of license fee. Though the said notice is receive by the respondent, but failed to comply and reply. Therefore the applicant as per clause 10 of the leave and license agreement rightly terminated leave the leave and license agreement by issuing 1 months notice. Hence, 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 termination as well as 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 termination as well as efflux of time.

10. In this regard the averments made in

application reveals that after the termination as well as 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 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.

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 applicant is that the respondent was in arrears of license fee a sum of Rs.23,500/- i.e. till 15/09/2021. The leave and license agreement terminated as per notice Dtd.23/09/2021. Therefore, the applicant is entitled for arrears of license fee from 01/04/2021 to 14/10/2021 at the rate of

Rs.4,700/- per month i.e. $4,700 \times 9 = 42,300/-$ from respondent.

14. It is further contention of applicant that after the termination of leave and license agreement i.e. from 22/10/2021 the respondent failed to vacate handover the vacant and peaceful possession of the application premises. 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. $Rs.4,700 \times 2 = 9400/-$ p.m. from 22/10/2021 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.6, Ground floor, Dhiren Apartment, Shanti Park, Upnagar, Nashik Road, House No.823/0081/035/A, Tal. Dist. Nashik within the limits of Nashik Mun. Corporation within 30 days to the applicant.
- III. The respondent is further directed to pay arrears of license fee a sum of Rs. 42,300/- within 30 days to the applicant.
- IV. The respondent is further directed to pay a license fee at the double rate i.e. $4,700/- \times 2 = 9,400/-$ per month from 22/10/2021 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