

Presented on : 29.01.2021.
Registered on : 09.02.2021
Decided on : 09/05/2022
Duration : 1Y 3M 6D

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

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

APPLICATION NO. 3 OF 2021

Exh. No. 11

1. Smt. Geeta Jaiprakash Updhaye,
2. Dr. Jaiprakash Ramdular Upadhe,
Age : 70 years, Occupation : Medical Practitioner,
C/o. Dhananjay Pashankar
Residence : 403, Land Marg Apartment,
Near Sanskrit Bhavan, New Haidrabad,
Lakhnau, Presently residing at Nashik **Applicant.**

..VERSUS..

Shri. Indrapalsingh Kulvindarsingh Gujral,
Age :50 years, Occu. : Business,
Residence : Twin Bunglow No.A-15, Dreemvilhas,
Housig Society, Survey No.860/1/1, Near Hemraj Hsg.
Behind Kamat Hotel,
Ganesh Baba Nagar,
Nashik-Punaroad- 422006. **Respondent.**

Claim : Application for Recovery of Possession and damages.

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Shri. C. V. Punde : 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 as "the Act" for the sake of brevity) to recover the vacant and peaceful possession of Twin Bungalow No.A.15, Survey No. 860/1/1/1 in Dreem Villas Building, House No.814/DRAM/VLS/A-15, Index No.81408759 admeasuring about 1900 Sq. Ft. consisting of hall + three Bed rooms + Hall + kitchen + Dining area, Terrace and Utility area, 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 that the respondent was permitted to use and occupy the application premises on leave and license agreement. Accordingly on 28/11/2019 the leave and license agreement was executed for a period of 15 months. The period of leave and license agreement was commencing from 30/01/2019 and ending on 31/05/2020. The license fee was fixed @ 20,000/- Per month.

3. It is a further contention of applicants that the respondent was irregular for payment of license fee. The respondent is in arrears of license fee a sum of Rs. 1,80,000/-. Despite several request the respondent failed to pay arrears of license fee and also failed to handover the vacant and peaceful possession of the application

premises. Therefore the applicants through their Adv. sent notice to respondent and called upon to pay arrears of license fee and also handover the vacant and peaceful possession of the application premises. The respondent deliberately refused to accept the notice. The period of leave and license agreement is expired by efflux of time. After the expiry of leave and license agreement the respondent failed to pay arrears of license fee and also failed to 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 summons sent to respondent, the envelope received back bearing remark 'Unclaimed, returned to sender'. The closed envelop is at Exh.9. 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 is received as 'Unclaimed, returned to sender'.

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 applicants 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 28/11/2019. On perusal of leave and license agreement it reveals that the applicants are the licensors and the respondent is licensee. The period of license is expired by efflux of time. Therefore, the applicants are 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-Registration Nashik-2.

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 the expiry period of leave and license agreement. Therefore, the applicants are 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 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 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.

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 applicants are that the respondent was in arrears of license fee a sum of Rs.1,80,000/-. Therefore the applicants are entitled for arrears of license fee of Rs.1,80,000/-. It is further contention of applicant that, after the expiry period of

leave and license agreement that is from 01/06/2020, the respondent was failed to handover the vacant and peaceful possession of the application premises, therefore from 01/06/2020 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.20,00 X2 =40,000/- p.m. from 01/06/2020 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 Twin Bungalow No.A.15, Survey No. 860/1/1/1 in Dream Villas Building, House No.814/DRAM/VLS/A-15, Index No.81408759 admeasuring about 1900 Sq. Ft. consisting of hall + three Bed rooms + Hall + kitchen + Dining area, Terrace and Utility area, 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 within 30 days to the applicant.
- III. The respondent is further directed to pay arrears of license fee a sum of Rs. 1,80,000/-within 30 days to the applicant.
- IV. The respondent is further directed to pay

a license fee at the double rate i.e.
20,000/-X 2 =40,000/- per month from
01/06/2020 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