

**EXEMPTION UNDER SECTION 3(1)(B) OF THE MAHARASHTRA RENT CONTROL ACT, 1999,
SHALL APPLY TO PRIVATE AND LIMITED COMPANIES WHICH HAVE A PAID-UP SHARE
CAPITAL AMOUNT EXCEEDING ONE CRORE RUPEES EVEN IF THE PREMISES ARE GIVEN TO
SUCH COMPANIES ON LICENSE BASIS**

INTRODUCTION:

The Bombay High Court in a recent decision in **Golden Legend Leasing and Finance Ltd. And Another versus Mr. Dilip Manohar Amladi and Ors.**¹, observed that the provisions of the Maharashtra Rent Control Act, 1999, would not apply to a company whose paid up capital is more than Rupees One Crore.

FACTS:

On or about 21st January 2019, the Petitioner No.1 and the Respondents entered into a Leave and License Agreement registered with the Joint Sub Registrar, Mumbai Sub Division, Bandra, ("**said Agreement**") pursuant to which the Respondents granted to Petitioner no. 1 license to use Flat No. 16, Galaxy Apartment Mumbai: 400050 ("**said premises**") for residential purposes for a period of 36 months viz. from 22nd January 2019 to 21st January, 2022.

The Petitioner No. 1 was liable to make payment of license fees under the said Agreement in advance during the license period so as to reach the Respondents (licensors) no later than two days from the commencement of each and every quarterly period during the license period.

The Respondents were entitled to terminate the said Agreement in any circumstance where the Petitioner No. 1 would have committed a breach of the terms and provisions of the said Agreement and/or if any licensee fees or other amounts/charges payable by the Petitioner no. 1 under the said Agreement were in arrears and

remained unpaid for a period of seven days after the same had become due and payable and in which case the Respondents would be entitled to terminate the said Agreement by giving the Petitioners notice in writing by specifying the breach and calling upon the Petitioners to remedy or make good the same. If the Petitioners failed or neglected to remedy the breach within a period of fifteen days from the date of such written notice, then the said Agreement would stand terminated and cancelled upon the expiry of such notice period of fifteen days.

The Respondents alleged that the Petitioners were irregular in paying the license fees to the Respondents post April, 2019 and therefore, the Respondents were compelled to follow up with the Petitioner no. 2 and her husband on numerous occasions for payment of the license fees from April, 2019, however, despite the follow up, the license fees continued to be in arrears. As a result, the Respondents were constrained to address various notices including notice dated 19th June, 2020, to the Petitioners (licensee) calling upon them to make payment

¹ Writ Petition No. 15477 of 2022

of the arrears of the license fees, failing which the license agreement would stand terminated and to hand over the said premises to the Respondents on such termination.

The Petitioner made part payments from time to time in response to the notices issued by the Respondents and assured the Respondents of the balance payment. The Respondents kept accommodating the Petitioner who continued to occupy the said premises.

The Respondents further alleged that the Petitioners neither vacated the said premises nor paid the outstanding license fees. In view thereof, the Respondents addressed a termination notice to remedy the breach and for payment of outstanding license fees along with other utility charges within a period of fifteen days, failing which the said Agreement would be terminated and cancelled on the expiry of the notice period.

Vide letters dated 25th January, 2021, and 5th February, 2021, the Petitioners admitted their liability, however, continued to be in possession of the said premises.

On or about 17th March, 2021, the Respondents filed an eviction application before the Competent Authority under the provisions of Section 43 of the Maharashtra Rent Control Act, 1999 ("**said Act**") for reliefs, more particularly set out therein.

Vide an order dated 20th October, 2021, the Competent Authority allowed the application and inter alia directed the Petitioner no. 1 to handover vacant and peaceful possession of the said premises to the Respondents.

Being aggrieved with the order dated 20th October, 2021, the Petitioners preferred a Revision Application before the Additional Commissioner, Konkan Division, under Section

44 of the said Act, inter alia raising the ground that the said Act would not apply to the case at hand as the Petitioner no. 1 had a paid-up capital of more than Rs. 1,00,00,000/- (Rupees One Crore only).

The Additional Commissioner, Konkan Division, dismissed the Revision Application vide its order dated 23rd December, 2021, and confirmed the order of the Competent Authority dated without considering the above issue raised.

Being aggrieved by the order of the Additional Commissioner, Konkan Division, the Petitioners preferred a Petition under Article 227 of the Constitution of India, before the Bombay High Court.

ISSUE FOR CONSIDERATION:

The main issue for consideration before the Bombay High Court was as follows:

Whether the Application under Section 43 of the said Act filed by the Respondents against the Petitioner no. 1 was maintainable before the Competent Authority?

SUBMISSIONS ON BEHALF OF THE PETITIONERS:

It was submitted on behalf of the Petitioners that the paid-up capital of the Petitioner no. 1 was approximately Rs.14.87 crores, which is more than Rs. 1 crore, and therefore, the Eviction Application filed by the Respondents was not maintainable under Section 3(1)(b) of the said Act. The Respondents could not have filed the application against the Petitioner no. 1 under Section 43 of the Maharashtra Rent Control Act.

In support of the above submissions, the decisions of various authorities in **EEPC India vs. Additional Commissioner, Konkan Division,**

***Mumbai and Ors.*², *Bhatia Co-operative Housing Society Limited vs. DC Patel*³ and *Da'Cunha Associates Pvt. Ltd. vs. Dilip Janghani and Others*⁴** were relied upon.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS:

It was submitted on behalf of the Respondents that the contention of the Petitioners (licensee) with regard to the applicability of the said Act and/or lack of jurisdiction of the Competent Authority was completely erroneous and was misplaced.

It was further submitted that section 3(1)(b) of the said Act suggests that the exemption under section 3(1)(b) was applicable to the premises which were 'let' to companies having paid up share capital of more than Rs. 1 crore and not in the event where the premises were granted on 'license basis'.

Relying upon the dictionary meaning of the word 'let' which means "to offer (property) for lease; to rent out", it was submitted that in the case of a license, the judicial possession of the premises always continues to remain with the licensor and therefore the question of non-applicability of the said Act does not arise.

It was further submitted that that section 24 of the said Act provided for an exclusive jurisdiction of the Competent Authority for the recovery of possession in the cases where the premises were granted on 'license basis' and that Section 24 of the said Act also started with a non-obstante clause. The entire object of Section 24 of the said Act would be frustrated and defeated if it was held that the said premises were exempted under the said Act by virtue of Section 3(1)(b) or that the Respondents would

have to exercise remedy of recovering possession by way of a regular suit before a Civil Court or before a Small Causes Court under Section 41 of the Presidency Small Causes Court Act.

It was further submitted that a harmonious construction of the said Act, would indicate that in the present case the Petitioner no. 1 was a licensee, the said premises was given on license by the Respondents who were the licensors.

In view of the aforesaid, the only remedy available to the Respondents for recovery of the possession of the said premises was under section 24 of the said Act and that as per section 47 of the said Act, no civil court would have jurisdiction in respect of any matter in which the Competent Authority was solely empowered.

JUDGMENT:

The Bombay High Court relied upon its earlier decision in ***EEPC India Vs. Additional Commissioner, Konkan Division, Mumbai and others (supra)***, wherein it was inter alia held if that if any premises were exempt from the application vide section 3(1)(b) of the said Act, there was no reason why such exemption would not extend to section 24 of the said Act. It was further held that once it was clear that any premise which was covered by section 3(1)(b) of the said Act was excluded from the operation of the said Act, there was no possibility of any conflict of application of section 24 of the said Act or any other provision of the said Act to such premises. The provisions of the Rent Control Act (including section 24) would be uniformly inapplicable to such premises.

The Bombay High Court observed that there would therefore be no question of section 24 of

² 2020 (5) Mh.L.J. 585

³ (1952) 2 SCC 355

⁴ 2010 (6) Mh.L.J. 132

the said Act taking precedence over Section 3(1)(b) of the said Act.

The Bombay High Court observed that the Petitioner no. 1 had a paid-up capital of more than Rupees One Crore. Accordingly, the provisions of the Maharashtra Rent Control Act, 1999, would not apply. The application filed by the Respondents under Section 24(1) of the said Act would also not be maintainable.

The Bombay High Court allowed the Petition and held that the Competent Authority had no

jurisdiction to entertain the application filed by the Respondents in view of the clear provisions of Section 3(1)(b) of the said Act and consequentially the Revisional Authority also lacked jurisdiction. As a result, the order of the Revisional Court as well as the order of the Competent Authority were quashed and set aside.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.