

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1321 OF 2015

Mr. Mohammed Ayub Salahuddin Ansari .. Petitioner
vs.
Miss Momin Huma Saeed Ahmed .. Respondent
(through her Constituted Attorney Holder
Mr. Saeed Ahmed Abdul Shakoor Momin)

Mr. Sagar Joshi for the Petitioner.
Mr. Sandesh D. Patil for Respondent.

CORAM : M. S. SONAK, J.
DATE : 20 AUGUST 2015.

P.C. :-

1] This petition challenges the orders dated 20 June 2013 and 11 December 2014 made by the Competent Authority and the Revisional Authority directing the eviction of the petitioner from the suit premises.

2] Mr. Sagar Joshi, learned counsel for the petitioner, submitted that in the application seeking eviction, at paragraph '8', it is stated that the terms of licence expired on 25 January 2001 and cause of action, therefore, arose on 25 January 2001. In the light of such statement, the application which was made on 18 September 2012, was clearly barred by law of limitation. This issue of limitation, though raised, has not been decided by the two Authorities and consequently, the impugned orders are vitiated by error of

jurisdiction. Mr. Joshi also submitted that the Power of Attorney, who deposed on behalf of the applicant-respondent was constituted as Power of Attorney in respect of Flat No. 202, when in fact, the suit premises are Flat No.201. Accordingly, Mr. Joshi submitted that the Power of Attorney was not at all authorised to depose in the matter. The two orders which are on the basis of such unauthorised deposition are, therefore, in excess of jurisdiction. Finally, Mr. Joshi submitted that the petitioner has, in fact, purchased the suit premises and if sufficient opportunity is granted, the petitioner is in a position to produce the documents of purchase. On all these grounds, Mr. Joshi submitted that the impugned orders be set aside.

3] Mr. Sandesh Patil, the learned counsel for the respondent, has submitted that there are concurrent findings of fact recorded by the two Authorities, which are based upon the material on record. Further, Mr. Patil pointed out that in the application seeking eviction, it has clearly been stated that the cause of action also arose on 11 February 2012, when despite notice, the petitioner failed to vacate the suit premises of which he was only a licensee. On the aspect of deposition by Power of Attorney, Mr. Patil submitted that reference to Flat No. 202 was an obvious error and in any case, the licensor who

had constituted the Attorney has no grievance in the matter. Accordingly, it is not for the petitioner to raise such hyper-technical grievance and seek to upset the orders made by the two Authorities directing his eviction.

4] Having heard the learned counsel for the parties and perused the record, in my judgment, there is no case made out to interfere with the impugned orders. In the first place, the two Courts recorded concurrent findings of fact that the petitioner was the only licensee of the suit premises and further that there was no merit whatsoever in the defence that the petitioner has purchased the suit premises. In fact, the petitioner has produced no material on record to substantiate his case of purchase. On the aspect of limitation, it is to be noted that the cause of action is of a recurring nature in the present case. Upon expiry of the term of licence, the petitioner may have continued in the suit premises. However, that by itself does not change the capacity in which the petitioner continued to occupy the suit premises. Ultimately, the notice was issued to the petitioner in February 2012 and since the petitioner failed to vacate the suit premises despite the receipt of such notice, the cause of action, once again, accrued to the respondent to seek the petitioner's eviction from the suit premises. In fact, in paragraph '8', the respondent has

averred that the cause of action arose on 25 January 2001 and again on 11 February 2012 and that the cause of action arises daily thereafter. Accordingly, there is no merit in the contention that the application thus barred by law of limitation. The obvious error in description of the suit premises cannot ennure to the advantage of the petitioner. The principal, i.e., licensor who had issued to Power of Attorney has no grievance in the matter

5] In the aforesaid circumstances, there is no reason to interfere with the impugned orders. This petition is, accordingly, dismissed. There shall, however, be no order as to costs.

6] At this stage, Mr. Joshi, learned counsel for the petitioner, seeks a stay upon the execution of the eviction order, on the ground that the petitioner might desire to seek a recourse against this order before the Hon'ble Apex Court. Subject to filing of usual Undertaking in this Court, within a period of two weeks from today, the eviction orders shall not be executed for a period of ten weeks from today. The copy of Undertaking to be furnished to the learned counsel for the respondent, before the same is filed in the Registry. The Undertakings to be filed by not only the petitioner, but also the adult members in his family.

(M. S. SONAK, J.)