

Sequeira

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION*

WRIT PETITION NO. 4526 OF 2015.

Mr.Subhas C.Acharya. .. Petitioner

Vs.

State of Maharashtra
Through
The Addl.Commissioner
Konkan Division & ors.

.. Respondents

Ms.L.H.Belindage, for Petitioner -discharged.

Subhas S.Acharya, Petitioner in person present.

Mr.A.R.Metkar, Assistant Government Pleader, for Respondent No.1.

Ms.Krishna M.Thacker, for Respondent No.2.

***CORAM: N.M.Jamdar, J.
Thursday 7 May, 2015***

Oral Order :

By this Writ Petition, the Petitioner challenges the orders passed by the Competent Authority and the order passed by the Commissioner Konkan Division, Mumbai dated 13 March 2015 and 15 April 2015.

2 A leave and license agreement was executed between the Respondent and the Petitioner on 31 July 2013. As per this agreement the premises i.e. Flat No.303 Sudhama Co-operative Housing Society Plot no.49 Sector No.29, Vashi were given on leave and license basis to the Petitioner for a period of 18 months from 1 August 2013 to 31 January 2015. The compensation for

occupation and use of the premises was fixed at Rs.17,000/-. The Petitioner was to keep an interest free deposit of Rs.50,000/- with the Respondents. The other standard clauses of the leave and license agreements were incorporated.

3 The Respondents filed an application before the Competent Authority being Case No.70 of 2014. It was the contention of the Respondents that the Petitioner had not paid monthly compensation for March, April and May 2014 and the cheques issued were dishonoured. The Respondents accordingly sought possession of the premises. The Petitioner filed his reply and contended that he was not liable to pay the compensation since the suit flat had problem of water leakage. The Competent Authority considered the rival contentions and came to the conclusion that, since the compensation was not paid, the Respondents were justified in terminating the leave and license agreement, and after the termination as well as expiry of the agreement on 31 January 2015, the Petitioner had no right to continue in the premises. Accordingly, the Competent Authority allowed the Application by order dated 13 March 2014 and directed the Petitioner to hand over of the possession of the premises to the Respondents.

4 The Petitioner thereafter filed an appeal bearing No.153 of 2015 before the Divisional Commissioner, Konkan Division, Mumbai. Initially the Commissioner granted a date in the application for stay without passing any order.

5 The Petitioner then initiated the present proceedings vide representation addressed to the Hon'ble The Chief Justice which was taken on board and the following order was passed on 15 April 2015 -

“Not on Board. Mentioned. Representation taken for consideration.

2 This is a representation made by the Petitioner to the Hon'ble the Chief Justice. The learned counsel appointed through the legal aid for the Petitioner states that the matter was mentioned before the Bench presided over by Shri V.M.Kanade, J. and the Petitioner has been given liberty to mention the matter before this Court in view of the urgency. On the statement of the learned counsel, taken up for consideration.

3 The learned counsel for the Petitioner states that in view of the urgency a complete Writ petition could not be filed and it will be filed before the next date. Leave to amend to file a complete petition granted. The learned counsel for the Petitioner submits that the Petitioner has filed a Revision application No.153 of 2015, on 10 April 2015 before the Additional Commissioner Konkan Division and Additional Commissioner has adjourned the hearing of the application to 18 June 2015, however, no orders are passed on the application for stay filed by the Petitioner. She submits that since there is no order passed in the said application, the Petitioner will lose possession of the premises today. Hence, there is an urgency.

4 Stand over to 22 April 2015. The Petitioner shall appear before the Additional Commissioner on 17 April 2015, at 11.00 a.m. The Additional Commissioner shall consider the application filed by the Petitioner for stay on its own merits, if it is already not decided. Till the application is decided by the Additional Commissioner, the

possession of the Petitioner will be protected.

5 *It is made clear that this order is passed only on the statement of the Petitioner in the representation and it is without prejudice to the rights and contentions of the Respondents. If any of the material facts stated in the representation are not correct, it will be open to the Respondents to apply to this Court for vacating this order.*

6 *In the meanwhile, the Petitioner shall serve the copy of the representation, to the Respondents, as well as the petition that will be filed, before the next date. All parties to act on authenticated copy of this order.”*

6 The Commissioner heard the Applicant on the application for stay. The Commissioner took note of the fact that the Petitioner had admittedly not paid the rent and that period of leave and license had expired and the Petitioner has no legal right to continue. The Commissioner also took note of the fact that the Respondent had received communication from his employer-B.A.R.C to vacate the staff quarters by 30 April 2015. Accordingly, by order dated 17 April 2015, the Commissioner rejected the application for stay.

7 Thereafter the matter was mentioned by the Petitioner on 22 April 2015 and the following order was passed -

“Not on board. Taken on board by way of praecipe.

2 *The Petitioner in-person states that the Petitioner will file complete petition by today. He states that as per direction contained in Order dated 15 April 2015, the Additional Commissioner has heard the matter as to*

interim relief and the order is awaited.

3 Place the matter on board on 5 May 2015. The Petitioner will give notice of the next date along with complete copy of the petition to the Respondent No.2.”

8 Again the matter was mentioned by the Petitioner in person on 24 April 2014 and the following order was passed-

“Not on board. Mentioned by the petitioner in person.

2 By order dated 10 April 2015, a representation made by the petitioner to the Hon'ble Chief Justice was entertained without there being any formal petition. An advocate from the Legal Aid was appointed for representing the petitioner. By order dated 10 April 2015, the Additional Commissioner was directed to hear the application of the petitioner for stay and till the decision of the Commissioner, the possession of the petitioner was protected, without hearing the respondents.

3 The petitioner had again mentioned the matter on 22 April 2015 and the matter was kept on 5 May 2015. The petitioner again mentioned the matter at 3.00 p.m. today and states that copy of the order passed by the Commissioner is available and places a certified copy on record. He prays that the possession of the petitioner be protected till the next date. The Commissioner has refused to grant stay in favour of the petitioner on the ground that the license period has expired and the petitioner has admittedly not paid the license fees since 2014 and that the respondent has received a notice to vacate the service quarter by 30 April 2015 and, therefore, he needs to occupy the present premises by 30 April 2015.

4 It was repeatedly put to the petitioner as to whether the petitioner is ready to deposit at least part of the

arrears so that his possession can be protected till the next date, as admittedly, the petitioner has not paid the arrears of license fees for one year. The petitioner has refused to tender even fraction of the arrears.

5 *In the circumstances, the application for stay orally made by the applicant cannot be entertained without any condition whatsoever. However, by way of indulgence time is granted to the applicant till 5.00 p.m. on 27 April 2015 to show his bonafides by depositing at least a part of the arrears in this Court. To enable the petitioner to do so, it is clarified that the protection granted earlier to be continued till 28 April 2015. If the petitioner fails to deposit the arrears or reasonable part thereof, the protection shall cease to operate.”*

9 Then the matter when it was listed on 28 April 2014, it was adjourned till 5 May 2015 and thereafter taken up today. The Petitioner has argued the matter in person, as well as the learned counsel appointed through legal aid has addressed the Court. Though the learned counsel appointed through legal aid had sought discharge, she attended the hearing and also addressed the Court on behalf of the Petitioner.

10 The Petitioner in person has placed voluminous pleadings on record. What is discernible from these pleadings is that, he is praying that the order of the Competent Authority be set aside or stay be granted during the pendency of the appeal filed by him, which has been refused by the Commissioner. It is contended on behalf of the Petitioner that the leave and license fee was not paid since the premises had a leakage problem. He also contended that

the premises were taken on leave and license basis by his employer to provide service quarters to the Petitioner and the employer of the Petitioner has illegally terminated the services of the Petitioner and therefore, the Petitioner was unable to pay the license fees and consequence of which he will have to vacate the premises. He submitted that in view of the illegal acts of the employer, not only the Petitioner has lost the source of livelihood but has also lost the shelter. The Petitioner in person submitted that inspite of the deposit by way of a cheque, it is wrongly mentioned that the security deposit has been paid by cash and this fact would make it clear that the landlord and the employer are in collusion to take steps against the Petitioner. The Petitioner relied upon the criminal complaints in respect of his grievance against the employer as well as the order passed by the Chairperson of Human Rights Commission. He also submitted that the summons issued to the Petitioner which quotes Section 23 and 24 of Maharashtra Rent Control Act 1999 are faulty as these sections are not attracted.

11 The learned counsel for the Respondents submitted that admittedly, no license fee has been paid and the leave and license agreement was terminated. Thereafter it has also expired. She submitted that nothing turns whether deposit was either in cash or cheque, and this is a matter of pure and simple leave and license agreement which is over. She also produced on record communications issued by B.A.R.C addressed to the Respondent calling upon the Respondent to vacate the office quarters.

12 It is settled law that the leave and license agreement has to be read as it is and it is not permissible to include something which is not stated expressly therein. The leave and license agreement is admitted. It is till 31 January 2015. The license fee has been specified, which is admittedly not paid. Cheques issued have been dishonoured. Therefore, landlord was justified in issuing notice of termination. Even assuming that notice was not faulty, the leave and license agreement has expired by efflux of time. Thereafter the Petitioner has no legal right to continue, neither any right is shown except making emotional appeals. As regards the grievance of the Applicant against the employer, the Applicant will have his remedies against the employer as indicated by Human Rights Commission. That cannot be made basis to continue in premises belonging to the landlord. The Respondent landlord has received received notice to vacate the staff quarters by 31 March 2015. When the petition had come up earlier, it was communicated to the Petitioner, subject to the rights and contentions of the parties, he should deposit some amount of arrears, even fraction of the amount also has not been deposited.

13 The Petitioner has approached this Court under Article 227 of the Constitution of India. The relief sought for is an equitable relief. None of the grounds which have been advanced by the Petitioner will entitle him to continue in the premises. Even the condition of deposit of arrears indicated in the earlier orders has not been complied with. The petition therefore, cannot be

entertained and is rejected.

14 At this stage, the Petitioner states that some time may be granted to vacate the premises. The Petitioner is given time upto 14 May 2015 provided that the Petitioner files an undertaking by tomorrow i.e. 8 May 2015. The undertaking shall state that he alone is in possession and will not create third party rights and that he will hand over peaceful and vacant possession of the suit premises, on 15 May 2015. If the undertaking is not filed by 5.00 p.m on 8 May 2015, it will be open to the Respondents to take action as per law.

(N.M.Jamdar, J.)