

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4825 OF 2014

Smt. Meena Vishwas Adhav.] ... Petitioner

Versus

Shri Deepak Kashinath Nevate.] ... Respondent

Mr. S. S. Punde for Petitioner.
Mr. A. S. Patil for Respondent.

CORAM :- M. S. SONAK, J.
DATE :- AUGUST 07, 2015

P. C. :-

1. Rule.
2. With the consent of and at the request of learned Counsel for parties, Rule is made returnable forthwith.
3. This petition challenges orders dated 04/04/2013 and 16/04/2014 made by the competent authority and the appellate authority under Sections 24 and 44 respectively of the Maharashtra Rent Control Act, 1999 ('Rent Act'), by which the Petitioner has been declined leave to defend.

4. Mr. S. S. Punde, learned Counsel for Petitioner, submitted that in the present case, no written leave and license agreement has been produced on record by the Respondent. The circumstances indicate that the Petitioner is a tenant in respect of the suit premises who has been regularly paying rent in respect of the tenancy. In such circumstances, Mr. Punde contends that leave to defend should have been granted as a matter of course.

5. Mr. A. S. Patil, learned Counsel for Respondent, submitted that the leave and license agreement was handed over to the Petitioner. However, the Petitioner has failed to return the same. That apart, Mr. Patil contended that the two Courts have rightly and concurrently held that he is a tenant in respect of the suit premises. Mr. Patil further submitted that at least from the year 2012, no amount whatsoever has been paid by the Petitioner in respect of the occupation of the suit premises. For all these reasons, Mr. Patil submitted that no interference is warranted in the impugned order.

6. Having heard the learned Counsel for parties and perused the record, it is to be noted that no leave and license agreement has been produced on record by the Respondent. In the application under Section 24, there is reference to some oral agreement. The two Courts have failed to appreciate that they were only deciding the issue of grant of leave to defend. Further, the two Courts have entirely placed the burden upon the Petitioner in the context of her claim that she is a tenant in respect of the suit property. This approach, particularly at

the stage of deciding application for leave to defend, cannot be said to be proper. At this stage, the authorities were required to satisfy themselves as to whether the defence of the Petitioner is really in the nature of a moonshine or whether some triable issues have been raised.

7. Insofar as the payment of rent/compensation is concerned, it does appear that from the year 2012, no payments have been made by the Petitioner towards the occupation of the suit premises. Mr.Punde states that some payment was offered but was not accepted by the Respondent. The appellate authority had directed the Petitioner to deposit a sum of Rs.10,000/- and Mr. Punde states that this direction has been duly complied with. Even according to the Petitioner, the rent in respect of the suit premises was Rs.700/- per month. This was the position in the year 2006.

8. Taking into consideration all the aforesaid circumstances, it would be appropriate if the two impugned orders are set aside and leave to defend is granted to the Petitioner subject to deposit before the competent authority within a period of six weeks from today a sum of Rs.25,000/- (Rupees Twenty Five Thousand Only), in addition to the amount of Rs.10,000/- (Rupees Ten Thousand Only) already deposited by the Petitioner. Further, during the pendency of proceedings before the competent authority, the Petitioner shall deposit compensation at the rate of Rs.1,000/- (Rupees One Thousand Only) per month effective from 01/09/2015. The competent

authority shall expeditiously decide the proceedings instituted by the Respondent and endeavour to dispose of the same within a period of one year from the date of production of authenticated copy of this order. Further, the Respondent shall be at liberty to withdraw the amount of Rs.35,000/- (Rupees Thirty Five Thousand Only) subject to filing an undertaking before the competent authority that such withdrawal shall abide by any final orders that may be made by the competent authority.

9. Accordingly, this petition is disposed of with the following order :-

- (a) The impugned orders dated 04/04/2013 and 16/04/2014 are set aside.
- (b) Leave is granted to the Petitioner to defend the proceedings in Case No.46 of 2012 pending before the competent authority, Konkan Division, Mumbai. The Petitioner to file Written Statement on 28/09/2015.
- (c) The aforesaid is subject to the Petitioner depositing before the competent authority an amount of Rs.25,000/- (Rupees Twenty Five Thousand Only) on or before 28/09/2015. In case the amount is not deposited, then this petition shall be deemed to have been dismissed.
- (d) The Petitioner is further directed to deposit before the competent authority compensation at the rate of Rs.1,000/- (Rupees One Thousand Only) effective from 01/09/2015.

- (e) The Respondent is granted liberty to withdraw the amount of Rs.35,000/- (Rupees Thirty Five Thousand Only) i.e. Rs.25,000/- which the Petitioner is to deposit in pursuance of the present order and Rs.10,000/- which the Petitioner has already deposited in pursuance of the order made by the revisional authority (Additional Commissioner).
- (f) The withdrawal shall be subject to the Respondent filing an undertaking before the competent authority that the withdrawal shall abide by any final order which the competent authority may make in the proceedings.
- (g) The proceedings before the competent authority in Case No.46 of 2012 are expedited and are directed to be disposed of within a period of one year from the date of production of authenticated copy of this order.
- (h) Parties to appear before the competent authority on 28/09/2015 at 11.00 a.m.
- (i) It is made clear that this court has not gone into the merits of the matter. Therefore, the competent authority to decide the case on its own merits and in accordance with law, without in any manner being influenced either by the impugned orders or the present order.
- (j) Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

(M. S. SONAK, J.)