IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1771 OF 2015

Benaras Media Work Pvt. Ltd. ..Petitioner

Vs.

Vandana Suresh Punwani & Ors. ..Respondents

WITH

CIVIL APPLICATION NO. 846 OF 2015

Vandana Suresh Punwani ..Applicant

Vs.

Benaras Media Work Pvt. Ltd. ..Respondent

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Mr. Vaibhav Krishna, Advocate i/b Juris Consillis for Petitioner and for Respondent in C.A. 846.15.
Mr. Rajiv Narula a/w Mr. Madhur Rai, Advocates i/b PRS Legal for Respondent No.1 and for Applicant in C.A. 846.15.

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CORAM : N.M. JAMDAR, J.
DATED : 31 MARCH 2015

ORAL ORDER.:

By this petition, the petitioner challenges the order dated 25 August 2014 passed by the Additional Commissioner, Konkan Division, Mumbai in Revision Application No. 32/2014. By the impugned order, the learned Additional Commissioner has set aside the order dated 9 January 2014 passed by the Competent Authority, Konkan Division, Mumbai. The Additional Commissioner has held that the Competent Authority has jurisdiction to decide the proceedings filed by the respondent.

2. The respondent is owner and landlord of the property known as “Vinky Villa”, Anand Vihar Co-operative Housing Society Ltd. 20th Road, Khar (W), Mumbai. The petitioner is a licensee of the said premises. The premises in question is a bunglow in co-operative housing society. A leave and license agreement was entered into between the parties on 10 February 2012. The respondent had permitted the petitioner to occupy the premises for a period of five years at monthly license fees of Rs.1,65,000/-. According to the respondent, the petitioner failed to pay the monthly compensation and also carried out unauthorised alterations. The respondent accordingly filed an Application No. 48/2012 before the Competent Authority, Konkan Division, Mumbai seeking eviction of the petitioner. In these proceedings, the respondent took out an interim application for deposit of license fees/compensation by the petitioner. The Competent Authority held that the leave and license agreement has been produced on record. The petitioner had admitted the leave and license agreement, in the reply filed by the petitioner. Considering this position, the Competent Authority by order dated 6 December 2012 directed the petitioner to deposit Rs.1,65,000/- per month from May 2012 to December 2012 and directed the petitioner to keep depositing the amount till disposal of the proceedings.

3. The petitioner challenged the order dated 6 December 2012 passed by the Competent Authority by way of Writ Petition No. 10140/2013 in this Court. The petitioner contended that the petitioner did not occupy the premises in question even for a single day. The petitioner was ready and willing to deposit the keys and submitted that the Competent Authority should be directed to dispose of the proceedings expeditiously. It was also contended by the petitioner that the premises were given for the purpose of production house and the proceedings instituted by the respondent under Section 24 of the Act were not maintainable as the premises were not given for the residential purpose.

4. The learned Single Judge (R.G. Ketkar, J.) disposed of the Writ Petition No. 10140/2013 by holding as under:

> *"6. I have considered the rival submissions made by the learned Counsel for the parties. I have also perused the material on record. It is not in dispute that the leave and license agreement was entered into between the parties on 10/02/2012. Perusal of the clause 3 thereof shows that the premises were given on payment of compensation of Rs.1,65,000/- per month plus service tax as applicable. Respondent No.1 has filed proceedings under Section 24 of the Act. During the pendency of this proceedings, application was filed for directing the petitioner herein to deposit amount of compensation as per the leave and license agreement. It is not in dispute that before the Competent Authority, the petitioner did not produce the supplementary agreement. Mr. Damle submitted that even the Respondent No.1 did produce the said agreement. As noted earlier, the Respondent No.1 has filed*

proceedings under Section 24 of the Act. When the petitioner is claiming that the premises in question are given for the purpose other than residential, it was expected of the petitioner to have produced the supplementary agreement. As the petitioner admittedly did not produce supplementary agreement before the Competent Authority, no fault can be found with that order. Moreover, the Competent Authority has directed the petitioner to deposit Rs.1,65,000/- per month which is consistent with the clause 3 of the leave and license agreement. In view thereof, no case is made out for invocation of powers under Article 227 of the Constitution of India. In the result, the petition fails and the same is dismissed.

7. The learned Counsel for the parties state that the next date before the Competent Authority in 10/12/2013. The Competent Authority is requested to decide the proceedings under Section 24 of the Act as expeditiously as possible and in any case, within two months from the date of appearance of the parties before the Competent Authority i.e. 10/12/2013.

8. Mr. Damle further submitted that the petitioner is willing to deposit the keys before the Competent Authority. The statement is recorded.

9. The amount so deposited by the petitioner shall be invested in any Nationalised Bank for a short duration.

10. While deciding the proceedings under Section 24 of the Act, the Competent Authority will also pass appropriate order in relation to the amount deposited by the petitioner.

11. All the contentions of the parties are expressly kept open.

12. Subject to above, the petition fails and the same is dismissed."

5. The perusal of the order reproduced above shows that the contention raised by the petitioner that the proceedings were not maintainable, was not accepted holding that the petitioner had not produced the supplementary agreement on which the petitioner was relying upon. The learned Single Judge therefore refused to interefere with the order of fixing compensation. The challenge to the order of fixing compensation was on the ground that the authority had no jurisdiction, and in spite of this challenge, the order passed by the Competent Authority was not disturbed. The order dated 06 December 2012 was not challenged. Thereafter the petitioner moved the matter before the learned Judge for extension of time for payment to deposit the amount. The petitioner was permitted to deposit the amount within four weeks from 9 December 2013. This amount was not deposited and is not deposited till date.

6. An application was then filed by the petitioner questioning the jurisdiction of the Competent Authority before the Competent Authority on 9 January 2014, when the last date for deposit of the amount was getting over. The matter was taken up for consideration immediately by the Competent Authority.

7. The Competent Authority took into consideration the supplementary leave and license agreement dated 10 February 2012. After interpreting this document and other documents

produced on record, the Competent Authority allowed the application filed by the petitioner holding that the premises were given for commercial purpose and therefore the Competent Authority will not have any jurisdiction. The proceedings filed by the respondent were accordingly rejected on the point of jurisdiction by order dated 9 January 2014.

8. The respondent thereafter filed a revision before the Additional Commissioner, Konkan Division, Mumbai. The respondent contended that the Competent Authority did not take into consideration the order passed by this Court in Writ Petition No. 10140/2013. It was contended that the petitioner had failed to pay the monthly compensation and also did not deposit the keys on time. It is further contended by the respondent that the petitioner had never raised objection to jurisdiction of the Competent Authority in reply and his contentions regarding the jurisdiction were not accepted by this Court. The petitioner relied upon the supplementary leave and license agreement and electricity bills to show that the premises were let out for commercial purpose. The Additional Commissioner considered the material on record and relied upon the leave and license agreement and came to the conclusion that the Competent Authority did not follow the procedure established in law for deciding the issue of jurisdiction and considering the conduct of the petitioner, set aside the order passed by the Competent Authority and remanded the proceedings

back to the Competent Authority by order dated 25 August 2014 to be decided on merits. This order is challenged in the present petition.

9. The petition came up on board on 23 December 2014 when the following order was passed:

> *" Heard learned Counsel for the parties.*
> *2. Time is granted to the petitioner to remove all office objections on or before 09.01.2015 failing which Writ Petition shall stand dismissed without referring back to the Court.*
> *3. After hearing both the sides at length, the learned Counsel for the petitioner submits that petitioner is ready and willing to comply the order dated 28.11.2013 passed by this Court (Coram: R.G. Ketkar,J) in Writ Petition No. 10140/2013 on or before 30.01.2015 including depositing key with the Registry of this Court.*
> *4. Statement is accepted.*
> *5. Liberty granted to the petitioner to deposit the entire amount upto the date on or before 30.01.2015. It is made clear that if the amount is deposited within stipulated time as stated hereinabvoe, respondents at present are not entitled to withdraw the same.*
> *6. The learned Senior Counsel for the respondents makes a statement that they will not proceed with the matter before the Competent Authority in Application No. 48/2012 till further order from this Court.*
> *7. It is made clear that if petitioner failed to deposits entire amount, respondents are entitled to proceed with the matter according to law."*

Thereafter the petition was moved by the petitioner on liberty to file bank guarantee which was rejected by the following order:

" Not on board. Mentioned.

2. Taken on today's board.

3. This application is taken out by the applicant to modyfy the order dated 23rd December 2014 and permit the applicant to submit bank guarantee within a period of four weeks.

4. In paragraph nos.3 and 4 of the order of 23rd December 2014, this Court has recorded as under:

'After hearing both the sides at length, the learned counsel for the petitioner submits that petitioner is ready and willing to comply the order dated 28.11.2013 passed by this Court (Coram: R.G. Ketkar, J) in Writ Petition No. 10140/2013 on or before 30.01.2015 including depositing key with the Registry of this Court.

Statement is accepted.'

5. In view thereof, in paragraph no.5, liberty was granted to the petitioner to deposit the entire amount upto date on or before 30.01.2015. It was also made clear that if the amount is deposited, respondent at present are not entitled to withdraw the same.

6. In the order dated 28th November 2013, this Court had upheld the order of the competent authority, while dismissing the writ petition.

7. On 9th December 2013, this Court clarified that the amount was to be deposited within four weeks from 9th December 2013.

8. On 23rd December 2014, the petitioner had given an undertaking to comply with the order of this Court, i.e. deposit on or before 30.01.2015. The amount was directed to be invested in the nationalized bank. Therefore, I see no reason in granting petitioner's prayer to modify the order and permit them to furnish bank guarantee instead of depositing the amount.

> *9. Application is therefore rejected.*
>
> *10. The Writ Petition be listed on 16th February 2015 instead of 9th February 2015 at the request of Counsel for the petitioner."*

When the matter came up on board on 11 March 2015, the learned Counsel for the petitioner placed on record that the petitioners have deposited the keys and the keys were directed to be in in the safe custody of the Registrar (Judicial).

10. Mr. Vaibhav Krishna, the learned Counsel for the petitioner submitted that the order passed by the Additional Commissioner is erroneous as the supplementary leave and license agreement clearly shows that the premises was given for the purpose of production house and the original agreement which did not specify any use and which was a neutral document, which was clarified by the supplementary agreement. Mr. Krishna relied upon the decisions of the Apex Court in the case of ***M.R. Engineers and Contractors Pvt. Ltd Vs. Som Datt Builders Ltd.*** passed in ***Civil Appeal No. 4150/2009*** and ***S. Chattanatha Karayalar Vs. The Central Bank of India & Ors.*** reported in ***AIR 1965 SC 1856*** and contended that the supplementary agreement which form the part and parcel of the original agreement has to be read together with the main agreement. He submitted that the supplementary agreement specifies the use as a production house and states that though the taxes then had to be paid as per the residential use, the difference in taxes if it is to be for commercial use, was to be borne

by the petitioner indicating clear intention of the parties. He submitted that though the petitioner has not deposited the amount, the consequences of not depositing has been clarified in the order dated 23 December 2014. He further submitted that the petitioner was never occupying the premises even for the single day and the order directing to deposit of amount could not be complied with due to financial difficulties. He submitted that the order passed by the Additional Commissioner being perverse and needs to be interfered with and the order of Competent Authority needs to be restored.

11. The first question that arises whether the petitioner is entitled to put forth an argument without depositing any amount as directed by the Competent Authority earlier. According to Mr. Krishna, there is no need to deposit the amount as the issue of jurisdiction is in favour of the petitioner. This submission cannot be accepted. The argument that the petitioner is not required to deposit any amount on the ground of jurisdiction was squarely raised and was rejected by this Court earlier. The argument was based on supplementary agreement which is very same argument being advanced today. The petitioner thereafter accepted this order and sought extension of time. The order dated 20 November 2013 was not challenged and further became final. Thus the position remains that the petitioner has not implemented the order passed by the Competent Authority nor of this Court. Today also

indulgence is sought not to comply with the order on the same grounds which was advanced before the learned Single Judge earlier and rejected.

12. Furthermore, even in the present petition, in order dated 23 December 2014, the petitioner had undertaken to comply with the order passed on 28 November 2013. Even that undertaking has not been honoured. Under Article 227 of the Constitution of India, the jurisdiction to be exercised is as an equitable jurisdiction. The Court is not bound to interfere with the orders of the Court below, if conduct of the petitioner is that of defying the orders of the Court. On that ground itself the petition deserves no indulgence and the petition requires to be rejected.

13. Even assuming the petitioner deserves to be granted indulgence of hearing, there is no case on merits. Firstly the argument based on supplementary agreement that the proceedings are without jurisdiction, was clearly made in Writ Petition No. 10140/2013 and was rejected. If this submission was to be accepted, there was no question of directing the petitioner to deposit the amount. The direction to deposit the amount would only have been maintained if the Court had came to the conclusion that the Competent Authority had jurisdiction. The fact that the argument based on leave and license agreement was not accepted and order was confirmed clearly indicates that this Court had rejected the argument based on supplementary agreement.

14. The second aspect is that the petitioner in the reply did not state about the supplementary agreement, however reference was made in the written submission and affidavit in rejoinder. It has to be noted that the supplementary agreement was allowed to be produced on record in spite of the objection of the respondent. The issue of jurisdiction was decided in most summary manner, that too in an interim application. Furthermore, the document which is relied upon i.e. the supplementary agreement was already not accepted by this Court earlier.

15. Mr. Narula, the learned Counsel for the respondent relied upon the decision in ***Swami Attah Vs. Mrs. Thrity*** reported in ***1996 (1) MLJ 603*** and ***Sails India Vs. Rita M. Rupani*** reported in ***1997(2) MLJ 269***. In these decisions, this Court after considering the relevant provisions of enactment held that the leave and license agreement will have to be read as it is and evidence as regard to the intention of the parties does not permissible to be led to find out the real intention of the parties. Thus if the supplementary agreement is kept aside, then the question of interpretation of the main leave and license agreement. This agreement is a neutral agreement and does not specify the use.

16. The premises are situated in a co-operative housing society and it is a bunglow. The respondent would have to take permission of the municipal corporation and the housing society to

convert it to a commercial use which admittedly has not been done. It is the case of the petitioner itself that fraud has been played on the petitioner by representing that the premises are commercial premises when in fact they are residential premises. This will have to be proved. Considering these facts, no perversity can be found with the view taken by the Additional Commissioner that the agreement is for the residential purpose and the order of the Competent Authority was incorrect and was passed on material which ought not to have been taken into consideration and was passed in summary manner.

17. As stated earlier, the petition deserves to be rejected on the first ground itself, even otherwise on merits, the petitioner does not have any case for interference under Article 227 of the Constitution of India. The petition is rejected.

18. The Civil Application No. 846/2015 is taken out, by the respondent for a direction to the petitioner hand over the keys of the bunglow, which has been deposited by the petitioner in this Court, and for appointment of Commissioner and initiation of contempt proceedings against the petitioner. The learned Counsel for the petitioner reiterates his arguments that the petitioner was never in possession. The petitioner has made it clear that the petitioner is not interested in possession of the property. The keys are already deposited. No purpose will be served by keeping the keys in the custody of this Court. In view of this position, the

Registrar (Judicial) to hand over the keys to the respondent/applicant in the civil application.

19. As regard prayer clause (c) in this application, it would be open to the respondent to make an appropriate application to the Competent Authority.

20. The learned Counsel for the respondent on instructions states that he is not pressing prayer clause (d) as regarding initiation of the contempt proceedings.

21. The learned Counsel for the petitioner sought to urge various contentions as regard the conduct of the respondent in respect of the keys. However it is not necessary to advert to the same in the present proceedings as the petitioner will have his own remedies in law.

(N.M. JAMDAR, J.)