

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 145 OF 2015

Vista India Digital Media
Pvt. Ltd. & Anr.

.. Petitioners

vs.

Smt. Papri B. Mehta & Anr.

.. Respondents

Mr. B. S. Banthia i/b. Mr. Sachin Daga for Petitioners.

Mr. Atul Damale -Senior Advocate with Ms Bina H. Jariwala i/b.
Auroma Law for Respondent No. 1.

CORAM : M. S. SONAK, J.

DATE : 05 AUGUST 2015

P.C. :-

1] This petition challenges order dated 22 November 2013 made by the Additional Commissioner, Konkan Division, Mumbai, rejecting the petitioners leave to defend proceedings in application no. 31 of 2011 instituted by the respondents before the Competent Authority, Konkan Division at Mumbai.

2] The Competent Authority by its order dated 7 July 2012 had in fact granted leave to the petitioners by observing that triable issues are involved in the matter. The triable issue, according to the Competent Authority was the issue of alleged loan advanced by the petitioners to the respondent in an amount of Rs.57.40 lakhs and some agreement that in case the said loan amount is not paid by

March 2010, then the right of the petitioners to purchase the suit premises.

3] The appellate authority has reversed the Competent Authority by holding that there there was no triable issue involved in the matter.

4] Mr. B. S. Banthia, the learned counsel for the petitioners submitted that triable issues were raised and the Competent Authority had rightly granted leave to defend and further rejected the application for deposit of double compensation under section 24(2) of the Maharashtra Rent Control Act, 1999 (Rent Act). The reasoning, in the context of application seeking leave to defend as well as direction for deposit of double the amount was the same. The Appellate Court has agreed with the reasoning of the Competent Authority in the matter of direction for deposit of double compensation. In such circumstances, Mr. Banthia, the learned counsel for the petitioners contended that leave to defend ought to have been granted as a matter of course.

5] Mr. Atul Damale, the learned Senior Advocate appearing for the respondent submitted that in this case there is a registered leave and licence agreement. In so far as the theory of loan is

concerned, there is absolutely no documentary evidence in support of the same. In any case, the loan, if at all has to be recovered in separate proceedings, where, the respondents would be at liberty to raise all permissible defences. There is no jurisdictional error in the making of the impugned order.

6] Having heard the learned counsel for the parties and perused the record, in my judgment, no case is made out to interfere with the impugned order. The reasoning involved in the matter of direction for deposit of the double compensation and grant of leave is not, and cannot be the same. The direction for deposit of double compensation was declined on the ground that at the interim stage it was not appropriate to make such a direction. The Appellate Court has concurred with the Competent Authority in observing that directions for deposit of total compensation can normally be made, at the final stage and since, final stage was yet to be reached, there was no question of directing deposit of double compensation. However, when it comes to grant of leave it is necessary that the licensee makes out some triable issue in the matter.

7] In the present case, the leave and licence agreement between the parties is registered. The execution thereof is not disputed. In the application seeking leave to defend all that is

stated is that the loan of Rs.57.40 lakhs was advanced and that the same had to be repaid until March 2010. Neither before the institution of proceedings before the Competent Authority nor within reasonable time thereafter, have the petitioners approached any Court of law in the matter of recovery of alleged loan amount. There is no document to link the alleged loan transaction and the licence created by virtue of the registered leave and licence agreement. The Competent Authority had merely stated that there is a triable issue, without really indicating even barely what such triable issue would be. The Appellate Authority was right in interfering with the bare conclusion recorded by the Competent Authority. Accordingly, there is neither any jurisdictional error nor perversity in the making of the impugned order.

8] It is further to be noted that from 1 March 2011, though the petitioners continue in occupation of the suit premises, the petitioners have not bothered to pay or deposit even the agreed monthly compensation at the rate of Rs.85,000/- per month. The arrears on this count, have *prima facie*, accumulated upto Rs.42,50,000/-. Upon the query from the Court as to whether the petitioners are prepared to deposit this amount, the learned counsel for the petitioners submitted that the petitioners would not deposit more than Rs.10 to 15 lakhs.

9] In the aforesaid circumstances, it is apparent that the so-called defence raised by the petitioners was in the nature of a moonshine. Leave to defend was, therefore, rightly declined.

10] The petition is accordingly dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)

Chandka