

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1786 OF 2016

Shri. Lekhraj Singh

.. Petitioner

Versus

The State of Maharashtra and others

.. Respondents

Mr. Aditya Khanna i/by Mr. A. A. H. Khan, for the Petitioner.

Mr. Lokesh Zade i/by Mr. B. M. Jain, for the Respondent No.3.

CORAM : R.M. SAVANT, J.

DATE : 12th FEBRUARY 2016

PC.

1. The writ jurisdiction of this Court is invoked against the order dated 23.12.2015 passed by the Additional Commissioner, Konkan Division, by which order, the Revision Application filed by the Petitioner came to be dismissed and resultantly, the order dated 25.02.2015 passed by the Competent Authority in Case No.60 of 2014 came to be confirmed. The Petitioner herein is the licensee in respect of the premises in question being Flat No.902, 9th floor, Deep Tower, near Samarth Garden, Oshiwara, Andheri (West), Mumbai-400 053. The said flat is of the ownership of the Respondent No.3 herein. The Petitioner and the Respondent No.3 entered into a Leave and Licence agreement for a period of 11 months effective from 01.04.2013 and ending on 28.02.2014. It appears that there were

two agreements entered into, one for the occupation of the premises and one for use of the furniture in the premises. In so far as the premises are concerned, the compensation fixed under the agreement for the same was Rs.15,000/- per month. In so far as the furniture is concerned, the compensation fixed for the use of the furniture was fixed at Rs.24,000/- per month. It appears that the said two agreements were notarized and it is the case of the Respondent No.3 i.e. the Applicant that he had fulfilled his obligations under the said agreement. However, it is the Petitioner herein i.e. the licensee who did not comply with the said agreement and had stopped payment after the initial payment of the licence fees for three months.

2. In view of the fact that the tenure of the agreement had expired on 28.02.2014, the Respondent No.3 filed an application under Section 24 of the Maharashtra Rent Control Act, 1999, for seeking possession of the premises from the Petitioner. The said application was numbered as Case No.60 of 2014. It seems that the Competent Authority before whom the said application was filed issued notice to the Respondent on 04.07.2014 and directed the Respondent to remain present before him on 07.08.2014 at 11.00 a.m. In terms of the scheme as contained in Section 43(3)(a) of the Maharashtra Rent Control Act, on receipt of the said summons, the Respondent was obliged to file an

application for leave to defend within 30 days. However, the Respondent did not do so and filed the application which was belated by two days and sought condonation of delay of the said two days. In the said application, the Respondent sought to raise various contentions as regards the ownership of the flat in question and also sought to contend that the said flat was attached by the CBI in some disproportionate assets case against one P. K. Ajwani who it was alleged was the actual owner. The application filed by the Petitioner was rejected by the Competent Authority on the ground that the said application was filed beyond the period prescribed by Section 43(4)(a) and that there was no power vested with the Competent Authority to condone the delay. The Competent Authority referred to the judgment of the Apex Court reported in **AIR 2003 Supreme Court 4591(1)** in the matter of **Prakash H. Jain Vs. Marie Fernandes Ms.**, wherein the Apex Court held that under Section 43(4) the Competent Authority exercising summary powers has no power to condone the delay for leave to defend. Since the application was rejected on the ground that it was filed belatedly, the Competent Authority did not deem it appropriate to consider the rival contentions on merits.

3. The Petitioner i.e. Respondent in the said Case No.60 of 2014 challenged the order passed by the Competent Authority dated 25.02.2015 before the Revisionary Authority i.e. Additional Commissioner, Konkan

Division. The Additional Commissioner, Konkan Division has by the impugned order dated 23.12.2015 rejected the said Revision Application, as the order discloses the Revisionary Authority held that since the Respondent i.e. the Petitioner herein has failed to vacate at the end of the licence period, the order for possession was required to be passed. The Revisionary Authority whilst dismissing the Revision Application has directed the Petitioner herein who was the Applicant in the Revision Application to pay the amounts which have been mentioned in clauses (3) and (4) of the operative part of its order. As indicated above, it is the said order dated 23.12.2015 passed by the Revisionary Authority which is taken exception to by way of the above Petition.

4. The principal contention of the Learned Counsel appearing on behalf of the Petitioner is that since the Leave and Licence agreement was not registered, the application filed under Section 24 was not maintainable. The Learned Counsel to buttress the said contention sought to place reliance on Section 55(2) of the said Act. In my view, the said contention urged on behalf of the Petitioner cannot be accepted, firstly in view of the judgment of a Learned Single Judge of this Court in **2005(4) Bom. C.R. 383** in the matter of **Raj Prasanna Kondur Vs. Arif Taher Khan & Others**, wherein it is held that the registration of an agreement is not a prerequisite for filing of an application under Section 24 and

secondly, on the ground that the consequences for non-registration of the agreement have been provided in the provision itself. The first consequences that if the agreement is not registered, then the contentions of the tenant as regards the terms of the contract are required to be accepted and the second consequence is that the landlord would face penal consequences. Hence, save and except the two consequences, no other consequences have been mentioned and as held by the Learned Single Judge in *Raj Prasanna Kondur's* case (*supra*), the non-registration of the said Leave and Licence agreement would not impinge on the filing of the application under Section 24. Hence, though the Revisionary Authority has confirmed the order on some other ground having regard to the legal position as above, the ultimate decision can be sustained for the reasons mentioned hereinabove. Hence, no case for interference in the writ jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M. SAVANT, J]