

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2417 OF 2015

Mrs. Saroj Sumit Pareek
nee Saroj Radhakishan Joshi

..Petitioner

Versus

Shri Vitthal Bapuji Kharade

..Respondent

....

Mr.Siddhartha R. Ronghe, Advocate for the Petitioner.

Mr. Vitthal Bapuji Kharade, respondent is present in person.

....

CORAM : R. G. KETKAR, J.

DATE : 01st OCTOBER, 2016

P.C.

1. Heard Mr. S.R. Ronghe, learned Counsel for the petitioner and Mr. Vithal Bapuji Kharade, the respondent in person, at length.

2. On 30.3.2015, this Court after hearing the learned Counsel for the petitioner, issued notice to the respondent. In the meantime, ad-interim relief in terms of prayer clauses (c) and (d) was granted. The matter was thereafter listed on various dates. However, due to paucity of time, the matter did not reach and was adjourned to subsequent dates. Till next date/s, ad-interim order was continued. On 1.7.2016, this Petition was heard when Mr.Harshad Inamdar, learned Counsel appeared for the respondent. The matter was adjourned to 20.7.2016 and the parties were put to notice that subject to time constraint and convenience of the Court, Petition will be disposed of finally on that date. In the meantime, ad-interim order dated 30.3.2015 in terms of prayer clauses (c)

and (d) was continued.

3. The matter was thereafter heard on 20.7.2016. On that date, the respondent appeared in person. He submitted that he had given discharge to his Advocate and wants to engage another Advocate. He sought two weeks time and assured that within two weeks he will engage new Advocate who will proceed to argue the matter on merits and will not seek adjournment on that ground on the next date of hearing. In view thereof, as and by way of indulgence the matter was adjourned to 4.8.2016, high on board. Parties were again put to notice that subject to time constraint and convenience of the Court, Petition will be disposed of finally on that date. It was also made clear that on the next date of hearing the application for adjournment from the respondent will not be entertained. In the meantime, ad-interim order granted earlier was continued.

4. On 4.8.2016, due to paucity of time, the matter did not reach and it was adjourned to 31.8.2016. Ad-interim order was ordered to continue. On 31.8.2016 at the request made on behalf of the respondent, the matter was adjourned to 21.9.2016 and interim order was ordered to continue. On 21.9.2016, the matter was mentioned at about 5:00 p.m. and accordingly it was adjourned till today, high on board.

5. The respondent in person again requested for time

on the ground that he wants to engage Advocate. In the earlier orders passed from time to time, I made it clear that said request cannot be accepted and as right from 20.7.2016 time was given to the respondent to engage Lawyer. Despite giving sufficient and reasonable opportunity, the respondent did not engage Lawyer and, therefore, the matter is heard in pursuance of earlier orders for final hearing. Accordingly I have heard Mr. Ronghe for the petitioner and the respondent in person. Rule. The respondent waives service. Rule is made returnable forthwith and petition is taken up for final hearing.

6. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 17.9.2014 passed by the Additional Commissioner, Konkan Division, Mumbai (for short, 'Commissioner') in Revision Application No.372/2012 filed by the respondent under Section 44 of the Maharashtra Rent Control Act, 1999 (for short, 'Act'). By that order, the Commissioner allowed the Revision Application filed by the respondent and quashed and set aside the orders dated 3.7.2012 passed by the Competent Authority, Konkan Division, Mumbai (for short, 'Competent Authority') in Case No.54/2011. The Commissioner remitted the matter to the Competent Authority.

7. The petitioner has instituted Eviction Application

No.54/2011 before the Competent Authority against the respondent under Section 24 of the Act *inter alia* contending that the respondent was inducted as a licensee in flat No.103 on the first floor of building known as "Bhawani Park", now known as "Bhawani Park Co-operative Housing Society Ltd.", standing in the layout of land bearing Survey No.43-A, Hissa No.11(Part), Survey No.44, Hissa No.1, and Survey No.45, Hissa No.2 situate at Bhayandar, District – Thane (for short, 'suit premises'). The respondent was inducted in the suit premises on the basis of the leave and licence agreement dated 13.8.1999 for residential user. As the period of licence has expired and the respondent failed to hand over possession as also failed to pay monthly compensation of Rs.2700/- per month, the petitioner instituted proceedings for recovery of possession of the suit premises.

8. The respondent filed application for leave to defend. The respondent contended that he came in contact with Radhakrishna Joshi. Radhakrishna Joshi suggested the respondent to purchase the suit premises and further informed him that the suit premises was purchased by him in the name of his daughter, the petitioner herein. The respondent had obtained voluntary retirement benefits of Rs.3,50,000/-. The respondent had also sold earlier flat in the year 1992 and had received Rs.1,95,000/- as sale proceeds. Accordingly Radhakrishna Joshi agreed to sell

the suit premises for total consideration of Rs.5,75,000/- to him. He informed Radhakrishna Joshi that he requires at least six months time to arrange Rs.5,75,000/-. Radhakrishna Joshi in turn informed that the suit premises will be transferred in the name of the respondent after registration of the sale deed and till such time he can use and stay in the suit premises as a tenant.

9. The petitioner filed reply to application for leave to defend. By order dated 3.7.2012, the Competent Authority rejected the application for leave to defend. In paragraph-5, the Competent Authority considered the defence set up by the respondent that he is the owner of the suit premises as also denial of leave and licence agreement. The Competent Authority held that the share certificate issued by the society stands in the name of the petitioner. It, therefore, cannot be said that the respondent is the owner of the suit premises and the petitioner herein is not the owner. The Competent Authority also referred to contention advanced on behalf of the respondent that he had parted with huge consideration to the petitioner's father and that he has not obtained receipts for the payments made by him. The respondent did not approach appropriate Court. In other words, the Competent Authority was of the view that the respondent did not approach the Civil Court for specific performance of the agreement.

10. Competent Authority thereafter proceeded to decide the proceedings under Section 24 of the Act and allowed the application made by the petitioner on 3.7.2012. Aggrieved by these orders, the respondent preferred Revision application under Section 44 of the Act before the Commissioner. By the impugned order, the Commissioner set aside the orders passed by the Competent Authority and remitted the matter to the Competent Authority. It is against this order, the petitioner has instituted the present Petition.

11. In support of this Petition, Mr.Ronghe submitted that the Commissioner committed serious error in allowing Revision Application. The Commissioner failed to consider provisions of Sections 24 and 43 of the Act. He submitted that in terms of explanation to Section 24 of the Act, an agreement of licence in writing is conclusive evidence of the facts stated therein. In other words, there is statutory presumption that once there is agreement of licence in writing as regards conclusive evidence of the facts stated therein. The parties have executed written leave and licence agreement on 13.8.1999. The Commissioner, however, observed that the leave and licence agreement is on stamp paper of Rs.20/-. It was neither purchased by the petitioner nor by the respondent. The leave and licence agreement is not a registered document. The Commissioner considered the agreement for sale dated 23.5.2000. The Commissioner

also considered the submissions advanced on behalf of the respondent that he has purchased the suit premises from the petitioner's father for a consideration of Rs.5,25,000/- and has received receipt for the same. The alleged agreement was placed on record by the respondent before the Commissioner. He submitted that the respondent had also filed application before the Commissioner for tendering the receipt dated 11.9.1999 issued by Radhakrishna Joshi and for taking the same on record. He submitted that no orders are passed on that application.

12. Mr. Ronghe further submitted that the Commissioner observed that the leave and licence agreement expired in the year 2000 and the petitioner approached the Competent Authority in the year 2011. The agreement produced by the respondent shows that suit premises was purchased by him in the year 2000 and the licence granted for the said premises in the year 1999. The petitioner failed to produce on record and proof of leave and licence agreement. The respondent has disputed leave and licence agreement and in fact has produced agreement for sale. The Commissioner observed that the Competent Authority did not give opportunity to the respondent to lead evidence regarding his contention. The case raises triable issues of law and facts which require evidence to be recorded. According the Commissioner gave leave to defend and set aside the order passed by the Competent Authority

and remitted the matter to the Competent Authority.

13. Mr. Ronghe further submitted that the respondent has not paid monthly compensation as also not complied clause (b) of the operative part of the order dated 3.7.2012 passed by Competent Authority. As of today, he is in arrears of Rs.10 Lacs. He, therefore, submitted that the impugned order deserves to be set aside.

14. On the other hand, the respondent has submitted that he has become owner in terms of agreement of sale executed by Radhakrishna Joshi in his favour. He has invited my attention to the receipt dated 11.9.1999 issued by Radhakrishna Joshi in favour of the respondent acknowledging receipt of Rs.5,25,000/-. He submitted that the respondent has instituted criminal case against the petitioner under Sections 465, 468, 470, 471 Indian Penal Code, 1860 (for short, 'I.P.C.') for forging and fabricating the documents. In that complaint, after recording statement of the respondent, the learned trial Judge had issued process against the petitioner herein as *prima facie* it revealed that the petitioner has committed offences under Sections 465, 468, 470 and 471 I.P.C. He submitted that the petitioner had filed application at Exhibit-12 in R.C.C. No.1720/2013 instituted by the respondent in the Court of learned Judicial Magistrate, First Class at Thane for discharge. By order dated 1.1.2015, the learned Judicial

Magistrate, First Class, Thane dismissed the application. The petitioner has suppressed said order from the Authorities below. The respondent further contended that the petitioner did not produce the documents before the Authorities below. The respondent did not get any opportunity before the Competent Authority and, therefore, the Commissioner was fully justified in remitting the matter to Competent Authority. He, therefore, submitted that no case is made out for invocation of powers under Article 227 of Constitution of India.

15. I have considered the rival submissions advanced by the parties. I have also perused the material on record. Perusal of leave and licence agreement dated 13.8.1999 *prima facie* shows that the same is signed by the respondent. The respondent was inducted in the suit premises on the basis of leave and licence agreement dated 13.8.1999. As against this, the respondent claims that Radhakrishna Joshi had executed agreement for sale on 23.5.2000. Radhakishan had also acknowledged receipt of Rs.5,25,000/- from the respondent on 11.9.1999 and thus he has become owner of the suit premises.

16. Section 54 of the Transfer of Property Act, 1882 defines 'contract for sale' and which reads thus :

“ Contract for sale.-A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms

settled between the parties.

It does not, of itself, create any interest in or charge on such property.”

17. Perusal of definition of 'contract for sale' clearly shows that a contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties. It does not, of itself, create any interest in or charge on such property. In other words, the agreement of sale does not create any interest in the immovable property. *Prima facie* no material is produced by the respondent to indicate that he has instituted suit for specific performance of agreement of sale dated 23.5.2000. In view thereof, the submission of the respondent that he has become owner of the suit premises cannot be accepted at this stage. As noted earlier, the respondent was inducted in the suit premises on the basis of leave and licence agreement dated 13.8.1999. *Prima facie* said agreement bears signature of the respondent. Explanation (b) to Section 24 of the Act reads thus :

“24. Landlord entitled to recover possession of premises given on licence on expiry-

(1) XX XX XX

(2) XX XX XX

(3) XX XX XX

Explanation.-- For the purposes of this section,--

(a) XX XX XX

(b) an agreement of licence in writing shall

be conclusive evidence of the fact stated therein.”

18. Perusal of explanation (b) to Section 24, extracted hereinabove, shows that an agreement of licence in writing is conclusive evidence of the fact stated therein. In view thereof, the Commissioner was not justified in holding that as the leave and licence agreement is executed on Rs.20/- stamp paper and the stamp paper was purchased in the name of some other party and no credence can be attached. The Commissioner has to proceed on the premise that there is a valid leave and licence agreement between the parties and thereafter ought to have decided the proceedings. The Commissioner failed to consider the import of explanation (b) of Section 24 of the Act.

19. Apart from that, the Commissioner committed serious error in holding that no opportunity was given to the respondent. As noted earlier, the respondent filed application seeking leave to defend. The Competent Authority considered the defence set up by the respondent and rejected application for leave to defend. The Commissioner also failed to consider the provisions of Section 43(4)(a) of the Act, which reads thus :

“43. Special procedure for disposal of applications.

(1) ...

(2) ...

(3) ...

(4) (a) The tenant or licensee on whom the summons is duly served in the ordinary way or by registered post in the manner laid down in sub-section (3) shall not contest the prayer for eviction from the premises, unless within thirty days of the service of summons on him as aforesaid, he files an affidavit stating grounds on which he seeks to contest the application for eviction and obtains leave from the Competent Authority as hereinafter provided, and in default of his appearance in pursuance of the summons or his obtaining such leave, the Statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant or the licensee, as the case may be, and the applicant shall be entitled to an order for eviction on the ground aforesaid."

20. Perusal of the extracted portion shows that after service of the proceedings under Section 43 of the Act, the licensee is precluded from contesting the prayer for eviction from the premises unless within thirty days of the service of summons on him, **he files an affidavit stating grounds on which he seeks to contest the application for eviction and obtains leave from the Competent Authority.** In default of his appearance in pursuance of the summons **or his obtaining such leave, the Statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant or the licensee, as the case may be, and the applicant shall be**

entitled to an order for eviction on the ground stated therein. [Emphasis supplied]

21. The Commissioner also failed to consider these provisions while setting aside orders passed by the Competent Authority. The respondent filed application for leave to defend and that application was turned down by the Competent Authority. In other words, the finding recorded by the Commissioner on this aspect cannot be sustained. The Commissioner also held that as triable issues of law and facts are involved in the matter which require evidence, an opportunity is required to be granted by allowing leave to defend. I do not find any justification for recording such finding. As the Commissioner has totally misdirected himself while conducting the revision, I have no option but to set aside the impugned order thereby restoring Revision Application for deciding it afresh.

22. Mr. Ronghe submitted that the respondent has not paid licence fee and is in arrears of Rs.10 Lacs and, therefore, he should be put to terms. It will be open to the petitioner to agitate this point before the Commissioner. The Commissioner while considering continuation of ad-interim order will deal with this contention and thereafter proceed to grant interim relief. He submitted that the Commissioner may be directed to dispose of Revision Application within three months from production of authenticated copy of this

order.

23. The respondent has invited my attention to order dated 1.1.2015 passed by the learned Judicial Magistrate, First Class, Thane dismissing the petitioner's application at Exhibit-12 in R.C.C. No.1720/2013 for discharge as also complaint filed by him in the Court of Judicial Magistrate, First Class, Thane under Sections 465, 468, 470, 471 of I.P.C. and order of issuing process in that complaint. He submitted that the petitioner has suppressed these orders from the Authorities below. Prima facie I do not find any relevancy of these documents while considering the proceedings under Section 24 of the Act.

24. In view thereof, Petition is disposed of in following terms:

- [i] Impugned order dated 17.9.2014 passed by the Commissioner in Revision Application No.372/2012 is set aside. Revision Application is restored to the file of Commissioner.
- [ii] While considering continuation of interim relief, the Commissioner will consider the contention advanced by the petitioner about arrears of compensation and deal with that contention before continuing interim relief.
- [iii] The Commissioner is requested to decide Revision Application within three months from production of the

authenticated copy of this order.

- [iv] All contentions on merits are kept open. The Commissioner shall decide the matter uninfluenced by the observations made herein.
- [v] Rule is made absolute in aforesaid terms with no order as to costs.
- [vi] All parties, including the Commissioner, shall act upon the authenticated copy of this order.

(R. G. KETKAR, J.)

Deshmane (PS)