

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4346 OF 2015**

Mrs Manju Prem Sood

..Petitioner

Vs.

**Mrs. Pushpa Tulsidas Parekh through
her C.A. Mr. Dharmesh Parekh & Ors.**

..Respondents

**Mr. A. S. Khandeparkar i/b Mr. Prem Sood and Ms Nazia Shaikh for the
Petitioner**

Mr. Kunal Bhanage for the Respondent No.1

CORAM : R. M. SAVANT, J.

DATE : 23rd FEBRUARY, 2016

P.C.

1 The Writ Jurisdiction of this court is invoked against the order dated 30-1-2015 passed by the Revisionary Authority i.e. the Additional Commissioner, Konkan Division, by which order, the Revision Application being No.170 of 2013 filed by the Petitioner, came to be dismissed and resultantly the order of the Competent Authority dated 5-3-2012 in Case No.29 of 2008, came to be confirmed.

2 The Petitioner herein is the original Respondent in the said application Being No.29 of 2008, filed by the Respondent herein under Section 24 of the Maharashtra Rent Control Act, 1999, (for short the said Act). The said application has been filed for possession of the premises from the Petitioner herein as the licence period according to the Applicant has come to

an end in 2007 after the initial licence period was extended though the licence period has come to an end, the Applicant herein continues to occupy the suit premises. The Petitioner herein i.e. the Respondent to the said application in terms of the procedure prescribed applied for leave to defend and the stand taken in the said application was that in fact an agreement to sale was entered into between the parties for consideration of RS.30 lacs for the sale of the flat in question. It was the allegation of the Petitioner herein in the said application that the Applicant had forged certain parts of the document so as to convert the said agreement to sale to a leave and licence agreement. The said fact was denied by the Applicant. The Competent Authority came to a conclusion that triable issues arise and therefore granted leave to defend to the Petitioner. The Petitioner pursuant to the leave granted has filed a Written Statement in the proceedings and in the Written Statement the same ground is taken in the application for leave to defend and has been reiterated by amplifying the same. In so far as the proceedings are concerned, issues came to be framed on 17-2-2009 and additional issues also came to be framed. In view of the fact that the relationship was sought to be denied by the Petitioner. Trial Court has framed an issue to the following effect.

“Does the applicant prove that she is licensor and Respondent is licensee in respect of suit premises?”

The said issue therefore impinges upon the maintainability of the application in as much as an answer to the said issue would determine whether

the application filed under Section 24 is maintainable.

3 In so far as the proceedings before the Competent Authority are concerned, the Respondent / Applicant has filed her affidavit of evidence on 7-7-2009 and the proceedings are at the stage where the cross-examination of the Applicant is awaited. The Petitioner filed the instant application questioning the maintainability of the proceedings on the ground of jurisdiction on 11-2-2012 and the ground made out is the same ground as urged in the application for leave to defend, as also the stand taken in the Written Statement namely that in fact an agreement for sale has been entered into between the parties but by carrying out forgery, the same is sought to be converted into a leave and licence agreement. The said application for rejection of the application on the ground of jurisdiction came to be replied to on behalf of the Respondent herein i.e. the original Applicant. The Competent Authority considered the said application and having regard to the conspectus of facts as narrated hereinabove rejected the said application by observing that the issue of jurisdiction would be considered with the other issues. The Revision Application filed against the said order of the Competent Authority dated 5-3-2013 also did not meet with any success, the Revision Application also came to be dismissed by the Revisionary Authority i.e. the Additional Commissioner, Konkan Division, by reiterating the reasons mentioned by the Competent Authority in its order. As indicated above, it is the said order dated 30-1-2015

passed by the Revisionary Authority which is taken exception to by way of the above Petition.

4 It was the submission of the Learned Counsel appearing for the Petitioner Mr. Khandepakar that the Competent Authority ought to have framed a preliminary issue of jurisdiction having regard to the challenge raised by the Petitioner based on the documents in question. It was the submission of Mr. Khandeparkar that though the issue as to whether there is a relationship of licensor and licensee has been framed, the said issue since would be going to the root of the matter, ought to have been tried as a preliminary issue. The Learned Counsel sought to place reliance on the judgment of a Learned Single Judge of this Court in the matter of **N. P. Karandikar (deceased) through LRs & Ors. Vs. Nanji Khimji & Co.**¹ in which judgment the Learned Single Judge has held that the provisions of the Civil Procedure Code are applicable to the proceedings before the courts exercising powers under the Presidency Small Causes Court Act and if that be so, the Trial Court ought to have framed a preliminary issue regarding the jurisdiction of the Competent Authority.

5 Per contra the Learned Counsel Mr. Bhanage appearing for the Respondent No.1 / Applicant would support the impugned order. The Learned Counsel would contend that in the instant case an issue as to whether the relationship between the parties as that of licensor and licensee, has already

1 2006(4)Bom.C.R. 520

been framed which issue would undoubtedly have to be adjudicated upon on the basis of the evidence which would be led, as the Petitioner / Respondent to the application has denied the document being a leave and licence agreement. It was the submission of Mr. Bhanage that though the affidavit of evidence is filed as long back as in the year 2009, the Applicant has not yet been cross-examined by the Petitioner herein.

6 I have heard the Learned Counsel for the parties. As indicated above, the Case No.29 of 2008 is filed under Section 24 of the said Act. In so far as the procedure which is envisaged for trying the said application, the same is prescribed by Section 43 of the said Act which is appearing in the chapter of summary proceedings. Hence the proceedings under Section 24 of the said Act are in the nature of summary proceedings which are to be conducted in terms of the procedure which is prescribed by Section 43 of the said Act. Though the factum of the Civil Procedure being applicable cannot be disputed. The question is whether a preliminary issue could be framed under Section 9-A of the Civil Procedure Code. Having regard to the fact that the procedure are under Section 24 of the said Act and since a special proceedings has been prescribed for trying the said application, the applicability of Section 9-A is thereby ruled out. In any event in the instant case there is no question of applying for interim reliefs which is a situation in which an application under Section 9-A can be filed raising the issue of jurisdiction. In so far as whether

the issue could be tried under Order XIV Rule 2 of the Civil Procedure Code is concerned, in the instant case, the issue of jurisdiction in view of the stand taken by other side cannot be said to be an issue which is purely a question of law and is therefore an issue which is a mixed question of law and fact which can only be adjudicated after evidence is led by the parties. Hence the said issue also cannot be tried under Order XIV Rule 2 of the Civil Procedure Code.

7 In so far as judgment in N. P. Karandikar's case (supra) is concerned, the facts involved in the said case were that an agreement was entered into between the builder who had been granted the right to redevelop the land by the landlord pursuant to which agreement the builder was to hand over possession of a bungalow and the tenants were to vacate the premises which were in their occupation in the old property. In the said case though the builder had handed over possession of the bungalow in terms of the agreement, the tenants were refusing to hand over possession of the two flats. The builder therefore had filed a Suit for specific performance and had also filed an application before the Competent Authority under Section 13-A(2) of the Bombay Rent Act 1947, as was then prevailing. The application was made by the tenant questioning the maintainability of the application filed before the Competent Authority on the grounds that there was no relationship of licensor and licensee and that the stand of the licence being terminated was taken for the first time after they had refused to vacate the premises. In the said case, an

issue as regards the applicability of the provisions of the Civil Procedure Code arose. The Learned Single Judge after going through the various relevant provisions came to a conclusion that the Civil Procedure Code would apply and therefore the Trial Court had erred in not framing the issue of jurisdiction.

8 In my view, the facts in the said case stand apart from the facts in the instant case, as in the instant case there is a dispute as regards the nature of the agreement where the Applicant has approached the Competent Authority on the basis that there is a leave and licence agreement between the parties. It is alleged by the Petitioner / Respondent that a forgery has been committed by the Applicant so as to convert the agreement for sale into a leave and licence agreement. These are disputed question of facts which cannot be adjudicated unless the evidence is led. Such was not the case in the matter before the Learned Single Judge in N. P. Karandikar's case (supra) as the facts involved therein were all admitted facts. In my view therefore the said judgment cannot aid the Petitioner.

9 Since the issue of whether there is a relationship of licensor and licensee has already been framed and since the said issue goes to the root of the matter as regards the maintainability of the application filed under Section 24 of the said Act, in my view, the Competent Authority may try the said issue No.1 before it tries the other issues. It is contingent upon the findings that

would be returned on the said issue that the fate of the proceedings would depend. In my view, the impugned order does not suffer from any illegality or infirmity for this court to interfere in its Writ Jurisdiction, however for reasons stated hereinabove, the Competent Authority may try issue No.1 prior to trying the other issues. With the aforesaid directions, the Writ Petition is dismissed.

10 Needless to state that the contentions of parties are kept open for being urged before the Trial Court. The hearing of the application is however expedited.

[R.M.SAVANT, J]