

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 6317 OF 2016

Mr. Ramesh Sidde Gawda

..Petitioner.

Vs

Shri Vivek Deendayal Agarwal

.. Respondent

Mr. B.R.Dalal, Advocate for Petitioner.

Mr. P. K. Singh (Thakur) i/b S.H.Mishra & Co, Advocates for the Respondent.

CORAM : R.G.KETKAR,J.

DATE : 10/06/2016

PC:

1. Not on Board. At the request of Mr. Dalal, taken up for admission. Heard Mr. B.R.Dalal, learned counsel for the petitioner and Mr. P.K.Singh, learned counsel for the respondent at length.
2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged (I) the Judgment and order dated 2.12.2015 on the application filed by the petitioner for leave to defend; (ii) the Judgment and order dated 2.12.2015, both, passed by Competent Authority, Konkan Division, Mumbai in Case No.19 of 2014 filed by the respondent under section 24 of the Maharashtra Rent Control Act, 1999 (for short, 'Act'); as also (iii) the Judgment and order dated 10.5.2016 passed by Additional Commissioner, Konkan Division (for short, 'Konkan Division').

3. By order dated 2.12.2015 below the application for leave to defend, the Competent Authority rejected the application made by the petitioner for leave to defend. By order dated 2.12.2015, the Competent Authority allowed the application made by the respondent under section 24 of the Act and directed the petitioner to hand over the vacant and peaceful possession of Flat No.201, Poonam-II , Cooperative Housing Society at Demonate Lane, Orlem, Malad (W), Mumbai 400 006 (for short, 'suit premises) to the respondent. The petitioner was further directed to pay to the respondent Rs. 11000/- per month from March 2013 till vacant possession of the suit premises is handed over to the respondent.

4. Aggrieved by this decision, the petitioner instituted Revision Application under section 44 of the Act before the Commissioner. By order dated 10.5.2016, Revision Application was rejected. It is against these decisions, the petitioner has instituted the present petition under Article 227 of the Constitution of India.

5. In support of this petition, Mr. Dalal strenuously contended that the petitioner is the owner and not a licensee in respect of the suit premises. The petitioner along with his family is residing in the suit premises since 2004. The petitioner had purchased the suit premises by paying valuable consideration of Rs.9,50,000/-

to the respondent. The respondent has instituted the proceedings under section 24 of the Act on the ground that Leave and Licence Agreement was executed between the parties on 25.2.2013. In fact, the petitioner is in possession in his capacity as owner of the suit premises. In support of this submission, he has relied upon voluminous documentary evidence such as passport, ration card, Aadhar card, Pan card, Bank Pass book, birth certificate, Postal Certificate, Telephone bill, Identity card.

6. Mr. Dalal submitted that Leave and Licence Agreement on which the respondent relies, is bogus and fabricated document. The said agreement does not bear signature of the petitioner. He submitted that in the application filed by the respondent under section 24 of the Act, he has suppressed the fact that the petitioner is in possession of the suit premises since 2004. As the respondent has suppressed relevant and material facts, on this ground alone, the authorities should have dismissed the application. He, therefore, submitted that petition requires consideration.

7. On the other hand, Mr. Singh supported the impugned orders.

8. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. Perusal of the record shows that the

petitioner claims to have purchased the suit premises from the respondent by paying consideration of Rs.9,50,000/-. It is the case of the petitioner that he had paid sum of Rs.9,50,000/- in cash to the respondent. It is his further case that when he had been to his native place along with his family, the respondent, with the help of anti-social elements, broke open the lock and took forcible possession and also document, namely, agreement entered into between the parties. It is not possible to accept this submission for more than one reason. As noted earlier, in the first place, the petitioner claims to have paid Rs. 9,50,000/- in cash. Secondly, assuming in favour of the petitioner that the respondent executed agreement of sale in his favour, having regard to Section 54 of the Transfer of Property Act 1882, agreement for sale, that by itself, does not create any interest in the property. If at all the petitioner claims to have purchased the suit premises on the basis of agreement of sale, remedy lies to institute proceedings for specific performance of the said contract. Prima facie, at this stage, it cannot be said that on the strength of agreement of sale, the petitioner has become owner of the suit premises. Section 54 of the Transfer of Property Act, 1982 defines the expression 'contract for sale' which reads thus:

“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”

9. Perusal of the above definition shows that contract of sale does not, by itself, create any interest in or charge on such property. In view thereof, it cannot be accepted that the petitioner became owner on the strength of the agreement of sale. While dismissing the application for leave to defend, the Competent Authority observed in paragraph 8 that the petitioner failed to place on record any receipts or bank statement substantiating his claim that he has paid huge amount to the respondent. The petitioner also failed to place on record the sale agreement which proves that he had purchased the suit premises from the respondent. As against this, the respondent has placed on record leave and licence agreement which is duly signed by the parties. The document produced by the petitioner does not prove that he occupies the suit premises in the capacity other than the licensee. As the period of licence expired, there is no question of the petitioner residing in the suit premises.

10. As far as the order of the Commissioner is concerned, the Commissioner has held in paragraph 4 that the petitioner failed to place on record any Agreement of Sale entered between the

parties as also failed to place on record any payment receipts which prove that he has purchased the suit premises.

11. The authorities below, after appreciating the material on record, have concurrently held against the petitioner. The petitioner was not in a position to demonstrate that the findings recorded by the Authorities below are perverse being based on no evidence or that they are contrary to evidence on record. In the light of the aforesaid discussion, I do not find that the petitioner has made out any case for invocation of powers under Article 227 of the Constitution of India. In the result, Petition fails and the same is dismissed.

12. At this stage, Mr. Dalal orally applies for stay of this order for a period of eight weeks from today. He states that the petitioner is in possession of the suit premises. The petitioner has neither created third party interest nor parted with possession. The petitioner will hereafter neither create third party interest nor part with possession.

13. Mr. Dalal assures that within two weeks from today, the petitioner and all adult family members residing with him will file usual undertaking in this Court, after giving advance copy to other side, incorporating therein:

(i) that they are in possession of the suit premises and nobody else is in possession;

(ii) that they have neither created any third party interest so far nor parted with possession;

(iii) that they will hereafter neither create third party interest nor part with possession;

(iv) that they will deposit arrears of compensation within two weeks from today in this Court under intimation in writing to the respondent's Advocate and that they will not apply for further extension of time for depositing arrears;

(v) that in case they are unable to obtain suitable orders from higher Court within 8 weeks from today, they will vacate and hand over vacant and peaceful possession of the suit premises to the respondent.

14. Hence, subject to the petitioner and all adult family members giving undertaking in this Court in the aforesaid terms and serving copy in advance to other side, notwithstanding dismissal of Petition, this order shall remain stayed for a period of eight weeks from today. It is made clear that if within two weeks from today, the undertaking in the aforesaid terms is not filed and arrears are not deposited, the interim order shall stand vacated without further reference to the Court.

15. List the Petition for compliance after three weeks.

(R.G.KETKAR, J.)