

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 7041 OF 2016

Shri. Naqvi Sayed Mohamed
Sadique Raza

...Petitioner

Versus

Shri Ankit Mishra And Ors.

...Respondents

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Mr. Cherag Balsara, a/w. Athesham Khatri and Asha Nair &
Shaikh Aziz Mohd. i/b. Diamondwala & Co. for the Petitioner.

Mr. Rakesh Agrawal, Advocate for the Respondent No.1.

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CORAM : R. G. KETKAR, J.

DATE : 24th June, 2016

P.C.

1. Heard Mr. Cherag Balsara, learned Counsel for the petitioner and Mr. Rakesh Agrawal, learned Counsel for respondent No.1, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 8.1.2016 passed by the Competent Authority, Konkan Division, Mumbai (for short, 'Competent Authority') in Case No.68/2014 as also the judgment and order dated 30.4.2016

passed by the Additional Commissioner, Konkan Division, Mumbai (for short, 'Commissioner') in Revision Application No.17/2016. By order dated 8.1.2016, the Competent Authority allowed the application filed by respondent No.1 under Section 24 of the Maharashtra Rent Control Act, 1999 (for short, 'Act') and directed the petitioner to hand over vacant and peaceful possession of flat No.411, 4th floor, B-Wing, Dhupchaon, New Horizon Co-operative Housing Society Ltd., Four Bungalows, Survey No.85, plot No.21, J.P. Road, Versova, Andheri (West), Mumbai – 400 058 (for short, 'suit premises') to respondent No.1. The Competent Authority further directed the petitioner herein to pay respondent No.1 Rs.1,50,000/- per month from 27.12.2012 to 26.11.2013 and further directed to pay Rs.3,00,000/- from 27.11.2013 till the vacant possession of the suit premises is handed over to the first respondent. Aggrieved by this decision, the petitioner instituted Revision Application under Section 44 of the Act which was dismissed by the Commissioner.

3. In support of this Petition, Mr. Balsara submitted that the petitioner has instituted Suit (L) No.52/2015 on the Original

Side of this Court for cancellation of the registered agreement of sale dated 27.12.2012 and leave and licence agreement dated 31.12.2012. He submitted that in that suit, the petitioner took out Notice of Motion praying for interim relief. By order dated 22.4.2015, this Court restraining the defendants therein (first respondent herein) from selling, transferring, alienating, alienating, leasing, letting out, creating tenancy in respect of or grant of leave and license or creating any mortgage, creating encumbrance or any third party rights in respect of the suit premises. The petitioner herein was also restrained from selling, alienating, transferring or creating any third party rights, including by way of leave and licence, lease or tenancy, and/or creating any encumbrance by way of mortgage, lien, charge or otherwise. As the petitioner continues to be the owner of the suit premises and is in possession in that capacity, the Authorities below were not justified in passing the impugned orders. He submitted that in case the petitioner ultimately succeeds in the Motion and/or Suit, it will create complications. He, therefore, submitted that the Petition requires consideration and interim reliefs prayed therein deserve to be granted.

4. On the other hand Mr. Agrawal supports the impugned orders. He relief upon following decisions :

- (i) **2010(1) Mh.L.J. 223
Surendra B. Agarwal and another v. AML
Merchandising Pvt. Ltd.**
- (ii) Unreported decision of this Court
(Coram:R.G. Ketkar,J.) dated 22.1.2014 in
W.P. No.13/2014 in the case of **Shri
Ravikumar Rajan Pandayan v. Shri
Sunderlal Sitaram Nirban and others.**

5. Mr. Agrawal submitted that it is only after the first respondent initiated proceedings under Section 24 of the Act, the petitioner has instituted the suit for cancellation of the registered agreement of sale as also registered leave and licence. He further submitted that the agreement of sale is executed by mother of the petitioner and not by the petitioner herein.

6. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record.

7. Perusal of order passed by the Competent Authority shows that in paragraph-10 the Competent Authority recorded that the petitioner did not file an application for leave to defend

in time and requested to condone the delay by filing an application. That application was rejected vide order dated 12.12.2014 on the ground that Competent Authority has no power to condone the delay. As the petitioner did not file application for leave to defend within a period of 30 days from the date of receipt of the summons as provided under Section 43(4)(a) of the Act, the Competent Authority held that the application for leave to defend is not maintainable. In view thereof, the petitioner has no defence in the case and the case of respondent No.1 herein remained unchallenged. Competent Authority also held that as the agreement of leave and licence is in writing, it is a conclusive evidence of the facts stated therein. This finding is in tune with explanation (b) to Section 24 of the Act.

8. As far as the order of the Commissioner is concerned, the Commissioner noted that the leave and licence agreement dated 31.12.2012 is a registered instrument. The agreement of leave and licence is in writing is conclusive evidence of the facts stated therein. Respondent No.1 has also produced agreement of sale dated 27.12.2012 which is also a registered instrument. In

view thereof, the Commissioner rejected the revision application.

9. During the course of hearing of this petition, I called upon Mr. Balsara to satisfy whether the petitioner has complied clause-(2) of the operative part of the Competent Authority's order. Mr. Agrawal has submitted a chart which shows that an amount of Rs.1,09,50,000/- is due and payable by the petitioner. Said amount is calculated from 27.12.2012 to 26.11.2013 @ Rs.1,50,000/- per month for eleven months and from 27.11.2013 till 26.6.2016 @ Rs.3,00,000/- per month for 31 months.

10. Upon taking instructions from the petitioner, Mr.Balsara submitted that the petitioner is unable to deposit Rs.1,09,50,000/-. I have also called upon Mr. Balsara as to whether the petitioner is ready to deposit the amount of compensation at Rs.1,50,000/- per month for the period from 27.12.2012 to 26.6.2016. Upon taking instructions, Mr.Balsara showed his inability to deposit said amount.

11. As noted earlier, the application made by the petitioner for condoning the delay in filing application for leave to defend

was rejected on 12.12.2014. The Competent Authority also considered the fact that agreement of leave and licence is in writing. It is not disputed that the said agreement is a registered instrument. It is also not disputed that by registered agreement of sale dated 27.12.2012, respondent No.1 has agreed to purchase the suit premises. In view of explanation (b) to Section 24 of the Act, the agreement for leave and licence in writing is conclusive evidence of facts stated therein. I, therefore, do not find that the authorities below committed any error in allowing the application filed by respondent No.1 under Section 24 of the Act. Apart from that the petitioner is also not willing to deposit the amount @ Rs.1,50,000/- per month which is agreed compensation between the parties. No other contention was raised. Hence, no case is made out for invocation of powers under Article 227 of the Constitution of India. The Petition fails and the same is dismissed.

(R. G. KETKAR, J.)