

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7636 OF 2016
WITH
CIVIL APPLICATION NO.2253 OF 2016 IN W.P. NO.7636 OF 2016

Gulab N. Gupta ... Petitioner
Vs.
Raymond Jerome Vaz ... Respondent

Mr. R. V. Govilkar for Petitioner.
Mr. Lokesh Zade for Respondent.

CORAM : R. G. KETKAR, J.
DATE : AUGUST 31, 2016

P.C. :

Heard Mr. Govilkar, learned Counsel for the petitioner and Mr. Zade, learned Counsel for the respondent at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner has challenged the judgment and order dated 17.02.2016 passed by the Competent Authority, Konkan Division, Mumbai (for short 'Competent Authority') in Case No.52 of 2011 as also the judgment and order dated 25.04.2016 passed by the Additional Commissioner, Konkan Division (for short 'Commissioner') in Revision Application No.109 of 2016. By these orders, the Courts below allowed the Application made by the respondent under Section 24 of the Maharashtra Rent Control Act, 1999 (for short 'Act') and directed the petitioner to handover vacant and peaceful possession of Room No.12 admeasuring 10' x 35' ft., ground floor, Gerome Vaz Chawl, Bamanpuri, Kondivita Village, C.T.S.No.438, J. B. Nagar, Andheri (East), Mumbai 400 059 (for short 'suit premises') to the respondent.

3. In support of this Petition, Mr. Govilkar strenuously contended

that the respondent had agreed to sell the suit premises to the petitioner for a valuable consideration of Rs.7,50,000/-. From 20.08.2009 to 20.09.2009, petitioner had paid Rs.5,59,500/- to the respondent and is ready and willing to pay balance consideration of Rs.1,90,500/-. He submitted that on the pretext of executing registered agreement of sale in favour of the petitioner, respondent took him to the office of the Registrar of Assurances at Bandra and obtained his signature on some typed papers. The petitioner is semi-illiterate and did not get any opportunity to understand the contents of the documents signed before the Registrar of Assurances. Petitioner was under impression that the agreement of sale in respect of suit premises is executed in his favour. He submitted that the authorities below were not justified in allowing the application under Section 24 of the Act more so when by order dated 21.08.2013 passed by this Court in Writ Petition No.7492 of 2013, leave to defend the proceedings is granted. He submitted that the petitioner is the owner of the suit premises and had paid almost entire consideration to the respondent.

4. He further submitted that on 19.08.2016, this Court had granted ad-interim order in terms of prayer clause (c) of the Petition. Despite communicating order to the officials attached to the office of the Competent Authority, they have dispossessed the petitioner and obtained forcible possession of the suit premises. He states that the petitioner will consider filing appropriate proceedings for contempt of order passed by this Court on 19.08.2016, if so advised. He submitted that in that regard, all the contentions of the petitioner may be kept open.

5. As against this, Mr. Zade supported the impugned orders. He submitted that the first registered leave and licence agreement was executed on 20.08.2008 for a period of 11 months from 04.10.2008.

The second registered leave and licence agreement was executed on 20.08.2009 for a period from 04.09.2009 to 03.09.2011. He submitted that during the course of cross-examination, petitioner admitted that the contents of the leave and licence agreements were read over and explained to him. As against this, Mr. Govilkar disputed this submission by inviting my attention to the cross-examination of the petitioner and submitted that in fact petitioner specifically stated that he was not aware of the contents of the leave and licence agreements.

6. Mr. Zade relied upon Section 24 of the Act and in particular explanation to sub-section (3) thereof and submitted that agreement of licence in writing is conclusive evidence of the facts stated therein.

7. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, it is not in dispute that the first registered leave and licence agreement was executed between the respondent and the wife of the petitioner on 20.08.2008 for a period of 11 months commencing from 04.10.2008 for residential purpose. It is also not in dispute that subsequently, second registered leave and licence agreement was executed between the parties on 20.08.2009 for a period commencing from 04.09.2009 and ending on 03.09.2011 for residential use of the suit premises. Respondent terminated the licence by issuing notice dated 29.03.2011 as per clause 21 of the agreement and called upon the petitioner to handover possession of the suit premises on 03.05.2011. Petitioner replied this notice on 20.04.2011 inter alia contending that respondent had agreed to sell the suit premises to him for a total consideration of Rs.7,50,000/- and he had paid Rs.5,59,500/- between 20.08.2009 and 20.03.2011. Instead of executing agreement of sale, respondent obtained leave and licence agreement by cheating the

petitioner. Respondent gave reply on 29.04.2011. The correspondence was exchanged between the parties and eventually, respondents filed application under Section 24 of the Act. Petitioner filed reply opposing the said application. Paragraphs 7 to 9 read thus,

“7. That somewhere in the month of July-August 2009, the respondent decided to purchase a suitable premises and the respondent informed his desire to purchase a room on ownership basis to the applicant and on that time the applicant shown his intention to sell the suit room and after negotiation the deal was stuck and the applicant agreed to sell the suit premises for the total consideration of Rs.7,50,000/-.

8. That from 20/08/2009 to 20/09/2009, the respondent paid a huge some of money to the applicant and till 20.09.2009, the respondent paid a sum of Rs.5,59,500/- and he is ready to pay the balance sum of Rs.1,90,500/- to the applicant.

9. That somewhere in first week of September 2009, the respondent ask the applicant for agreement for sale but he applicant assured them to prepare and get the agreement for sale registered with the Registrar of Assurances at Bandra and accordingly, on 20.09.2009 the applicant took the respondent with him in the office of the Registrar of Assurances at Bandra, Mumbai and obtained his signature on some typed papers under the guise that the same was agreement for sale and thereafter appeared before the registrar for registration. The respondent being semi-illiterate could not give any opportunity and / or not aware about the contents of the documents and signed and participated of the said registrar proceedings of the document under the good and in impression that the some was agreement for sale of the said room in his favour.”

8. Perusal of paragraph 9 extracted hereinabove shows that petitioner came with the case that in the first week of September 2009, petitioner asked the respondent for executing the agreement of sale. Respondent assured that he will prepare and get the agreement for sale registered with the Registrar of Assurances at Bandra and accordingly, on 20.09.2009, respondent took the petitioner to the office of the Registrar of Assurances at Bandra and obtained his signature on some typed papers. Under the guise of executing the agreement for sale, in fact the respondent had obtained leave and licence agreement. The

defence to say the least is clearly an after-thought and is contrary to the record. In fact, as noted earlier, the second leave and licence agreement was executed on 20.08.2009. In view thereof, there was no question of the respondent taking the petitioner to the office of the Registrar of Assurances on 20.09.2009. Explanation to Section 24(3)(b) of the Act reads thus,

“(b) an agreement of licence in writing shall be conclusive evidence of the fact stated therein.”

9. Section 54 of the Transfer of Property Act, 1882 lays down that agreement of sale of itself does not create any interest in or charge on in the property. Prima facie, on the basis of the assertions made in the written statement, petitioner cannot claim ownership of the suit premises as on date. The status of the petitioner in the suit premises is essentially that of a licensee. In view of Explanation to sub-section (3) of Section 24, the agreement of licence in writing is conclusive evidence of the facts stated therein. In view thereof, I do not find that the authorities below committed any error in allowing the application under Section 24 of the Act. Hence, Petition fails and the same is dismissed.

10. In view of the dismissal of the Petition, Civil Application No.2253 of 2016 for restoration of possession does not survive and the same is disposed of reserving liberty to the petitioner to file Contempt Petition, if so advised. Order accordingly.

11. At this stage, Mr. Govilkar seeks permission to remove the articles of the petitioner lying in the suit premises. He states that petitioner is present in the Court. He has tendered photocopy of his driving licence, which is taken on record and marked 'X' for identification. Mr. Govilkar, on instructions from the petitioner, states that the petitioner will visit the suit premises on 2.9.2016 at 3:00 p.m.

for collecting the articles. He assures that the petitioner will extend full cooperation for peacefully collecting his articles. Mr.Zade states that Mr.Bhosale, Executing Inspector attached to the office of the Competent Authority had removed the articles of the petitioner and kept in one room. He has also put seal over that room. He, therefore, submits that Mr.Bhosale, Executing Inspector or any other responsible officer of the Competent Authority may be deputed to remove the seal put over the room and for ensuring removal of articles of the petitioner peacefully.

12. In view thereof, Mr. Bhosale or any other responsible officer attached to the Competent Authority shall remain present on 02.09.2016 at 3.00 p.m. and remove the seal so as to enable the petitioner to remove his articles lying therein. All parties, including the officials attached to the Competent Authority, shall act upon the authenticated copy of this order.

(R. G. KETKAR, J.)

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