

Sequeira

WRIT PETITION NO. 7598 OF 2016

Mr.Akshay Kulkarni, for the Petitioner.
Mr.S.L.Mhatre i/b Shraddha Gholap, for Respondent No.1.

*CORAM : N.M.Jamdar, J.
Monday, 5 December 2016.*

Oral Order :

Rule. Rule made returnable forthwith. By consent of parties taken up for final disposal.

2. The Petitioner has challenged the orders passed by the Competent authority established under the Maharashtra Rent Control Act, 1999 dated 30 October 2012 refusing to grant leave to the Petitioner to defend the proceedings instituted by Respondent-landlord, allowing the application filed by the Respondent-landlord and directing the Petitioner to hand over vacant and peaceful possession of the suit premises to the Respondent No.1-landlord and the order passed by the Commissioner, Konkan Division, Mumbai dated 12 May 2016.

3. The Petitioner is occupying one room bearing Room No.3, Cyril House, Manipada Village, Kalina, Santacruz (E) Mumbai. The premises are situated in a chawl structure. An application was moved by the Respondent-landlord for eviction of the Petitioner from the premises under section 24 of the Act. It was contended by the Respondent-landlord that leave and license agreement was executed, on 15 January 2008 for period of 36 months for residential purpose on license fee of ₹ 300 per month without any security deposit and the license was to expire on 15 January 2011. It was stated that after the license period expired, the Petitioner did not vacate the suit premises and sought to create third party rights and therefore he was liable to be evicted and possession be handed over to Respondent-landlord. The Petitioner sought leave to defend when he appeared pursuant to summons issued. It was contended that the Petitioner was occupying the premises as tenant for sixteen years and the Respondent No.1 is only owner of the structure and not of the land. The Competent authority by order dated 30 October 2012 rejected the application for leave to defend and on the same day by a separate order directed the Petitioner to hand over vacant possession of the premises to Respondent-landlord. The Petitioner thereafter filed Revision application under section 44 of the Act and the Additional Commissioner by order dated 12 May 2016 rejected the application.

4. Heard Mr.Akshay Kulkarni, learned counsel for the Petitioner and Mr.S.L.Mhatre, learned counsel for Respondent No.1.

5. Section 43 of the Act provides for procedure for disposal of the applications moved by landlords for recovery of possession from the licensee. The section contemplates that after an application is so filed the summons will be issued to the licensee and after receipt of the summons the licensee would not be permitted to contest the prayer for eviction unless within 30 days of service on him he files an affidavit stating grounds on which he seeks to contest the application and obtains leave from the Competent authority to defend the application. Once leave is granted to the licensee to contest the application the Competent authority is expected to commence the hearing as early as practicable and decide the same within six months of the order. The Competent authority while holding an inquiry is supposed to follow the practice and procedure of Small Causes Court including recording of evidence. Therefore, Section 43 acts as a filter against frivolous defences raised by the licensees so that the landlord has a remedy of speedy recovery of possession of licensed premises. However, if the licensee crosses the threshold of demonstrating that he has a triable issue then a detailed inquiry including recording of evidence has to follow. Therefore, not granting leave to defend has drastic consequence for the licensee, at the same time, granting leave to defend protracts the litigation which causes prejudice to the landlord. Therefore, application of mind by the Competent authority at this stage is as to whether to grant or refuse the leave to defend is crucial.

6. The main grievance raised by Mr.Kulkarni, the learned counsel for the Petitioner is that inspite of making out a triable issue, the Competent authority has not granted leave to defend and on the same day has proceeded to pass an order of eviction. The contention raised by the Petitioner for grant of leave to defend was that there is no leave and license agreement produced on record and the case of the Petitioner of being a tenant for sixteen years has been brushed aside at the preliminary stage itself. The learned counsel for the Petitioner relied upon decision of the Apex Court in the case of *Inderjeet Kaur Vs Nirpal Singh – (2001) 1 Supreme Court Cases 706*. The learned counsel for the Respondent on the other hand relying on the decision of the learned Single Judge in the case of *Raj Prasanna Kondur Vs Arif Taher Khan & ors. - 2005(4) Bom.C.R. 383* contended that it is not an absolute requirement of law that the agreement needs to be in writing.

7. In the case of *Inderjeet Kaur* which arose from the provisions of Delhi Rent Control Act, 1958 which contains a similar provision regarding grant of leave to defend, the Apex Court has laid down that it is not that the tenant / licensee at the stage of grant of leave to defend must demonstrate with absolute certainty that he is bound to succeed. Turning to the facts of the present case, Respondents have come with the case that the leave and license agreement exists and the original was with the Petitioner which the Petitioner refused to return. Upon a query to learned counsel for the Respondent, he

accepted that the premises are located in a chawl structure where there are various tenants. Therefore prima facie, it is not possible to believe that the Respondent an experienced landlord of various tenants could not even take care of keeping atleast a copy of leave and license agreement with him. Once this fact was brought on record by the Petitioner, the Competent authority then ought to have looked into the position that the Petitioner had asserted that he was living in the premises since March 1997 i.e. for sixteen years. Therefore, once the Respondent-landlord came with a prima facie unacceptable explanation for not placing even a copy of the agreement on record and that Petitioner had pleaded that he was a tenant and was sought to be evicted only to give way to demolition of the building to facilitate redevelopment at the hands of a developer, it could not have been said that no triable issue was raised by the Petitioner at all. As far as the decision in the case of *Raj Prasanna* is concerned, in the said case the summons was served. The licensee did not remain present and proceedings were conducted *ex parte* and when the challenge was laid to the passing of the *ex parte* order, it was argued before the learned Single Judge that in absence of valid and lawful agreement proceedings were *ab initio* and that the agreement was not registered, the learned Single Judge noted that it was undisputed fact that the parties had executed a written agreement and the agreement was not registered but lodged for registration and the Petitioner did not appear before the authority. It is in these facts that the learned Single Judge made observations regarding necessity of producing

written registered agreement on record. In the present case Respondent-landlord has asserted existence of a written agreement but has given an explanation as stated earlier which prima facie does not stand to reason that even a photo copy will not be kept by the Respondent-landlord with himself.

8. In these circumstances, the order passed by the Competent authority refusing the Petitioner to grant leave to defend was not a proper exercise of jurisdiction. Grave prejudice has occasioned to the Petitioner by such a summary disposal of the proceedings. The order passed by the Commissioner has merely confirmed the decision of the Competent authority with no independent application of mind.

9. The Writ Petition is allowed. The impugned orders dated 30 October 2012 and 12 May 2016 are quashed and set aside. The Case No.30 of 2012 stands restored to the file of the Competent authority. Leave is granted to the Petitioner to defend the Case No.30 of 2012 as per the provisions of section 43(4) of Act of 1999. The Competent Authority will accordingly dispose of the case from the stage of grant of leave onwards as per law. The Competent Authority will keep in mind a mandate of law as provided under section 43(4) (c) of the Act regarding the time limit. Rule made absolute in above terms. No costs.

10. It is clarified that the observations made above, are only for the

purpose of granting leave to defend to the Petitioner and therefore, they are purely prima facie and the Competent Authority will decide the case on its own merits.

(N.M.Jamdar, J.)