

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.2231/2015
IN
WRIT PETITION NO. 9331/2014

Shri Kashinath G. Kore (Deceased)
Through his legal heirs
Smt. Premal Kashinath Kore & Ors.

... Applicants

V/s.

Sanjay Champaklal Shah & Ors.

... Respondents

Mr. K. N. Kore for the Applicants
Mr. Ganesh S. Vaidya for the Respondent No.1.
Mr. Vaibhav R. Gaikwad for respondent Nos.2C.

CORAM: K.K. TATED, J.
DATED : MARCH 7, 2016

P.C. :

1. Heard the learned counsel for the parties. This Application is made by the licensee of the suit premises for directions to the Respondent landlord to hand over peaceful and vacant possession of the suit premises i.e. suit flat No.101, Suvidha Apartment, 1st floor, near Raju Garage, Mahim Road, Palghar – 401 404, to the Applicant forthwith and restore the possession of the suit premises, till hearing and final disposal of the petition.

2. It is the case of the Applicants that as per agreement of leave and license agreement dated 14/12/2005, the Applicant along with her family members, was residing in the suit premises. The Respondent -

land lord filed Application u/s. 24 of the Maharashtra Rent Control Act, 1999 (said Act) before the competent authority i.e. Commissioner, Konkan Division, Mumbai being Application No.57/210 for vacant and peaceful possession of suit premises and compensation. In that case the Applicant filed Application for leave to defend, which was rejected by the competent authority by order dated 16/08/2012. In view of rejection of the application filed by the applicant for leave to defend, the competent authority, by judgment dated 16/08/2012 allowed the respondent landlord's application u/s. 24 of the said Act directing the applicant to handover vacant and peaceful possession of the suit flat and also to pay sum of Rs.1,58,400/- being arrears of compensation and Rs.6600/- pm from November 2010 till vacant and peaceful possession of the suit premises was delivered to the respondent landlord.

3. Being aggrieved by the said order, application filed Revision Application No.509/2012 u/s. 44 of the said Act, which was dismissed by the Additional Commissioner, Konkan Division, Mumbai on 05/08/2014. Hence, the applicant filed the present Writ Petition.

4. It is the case of applicant that during pendency of the Writ Petition, the respondent took possession of the suit flat. The learned counsel for the applicant submits that the application filed by the respondent u/s. 24 of the said Act itself was not maintainable because the leave and license agreement dated 14/12/2005 and subsequent agreement were not duly registered. In support of this contention, the learned counsel for the applicant relies on the judgment of the Apex Court in the matter of ***K.B. Saha and Sons Pvt. Ltd. Vs. Development***

Consultant Ltd. (2008) 8 SCC 564 and also the judgment of this court in the matter of ***Amit B. Dalal Vs. Rajesh K. Doctor 2011(2) BCR 348***. The learned counsel for the applicant submits that when the application filed by the respondent u/s. 24 of the said Act itself was not maintainable, the respondent has no right to take possession of the suit premises. Hence, pending the hearing and final disposal of the Writ Petition, the respondent may be directed to restore the possession. He submits that if the civil application is not allowed, irreparable loss will be caused to the applicant. He submits that as on today, the applicant does not have any alternate place to stay. He submits that though the respondents stated in their Affidavit-in-Reply that applicants have an alternate accommodation, same is not in a proper condition.

5. On the other hand, the learned counsel for the respondent vehemently opposed the civil application. He submits that by following due process of law, they obtained possession of the suit premises on 13/07/2015. He further submits that the objection raised by the applicant about registration of the document can be considered only at the time of final hearing of the petition. He further submits that apart from that, this court, in the matter of Amit B. Dalal (supra), specifically held that the application is maintainable even if the document is not registered. He mainly relies on para 13 of the said order which reads thus:

“13. He submitted that as section 55 of the said Act of 1999 contemplates compulsory registration of an agreement of leave and licence in accordance with the provisions of the said Act of 1908, the non-registration thereof will attract consequences provided under section 49 of the said Act of 1908. He submitted that the conclusiveness with which the agreement is clothed by explanation (b) of section 24 is of a ‘fact’ and not of ‘facts’. He

submitted that a written agreement cannot be a conclusive evidence of all the facts stated therein. He submitted that a written agreement of leave and licence can be at the most the conclusive evidence of the purpose of licence, the period of licence and the amount of licence fees provided the relationship of licence or licensee is admitted by the parties. He submitted that in any case clause (b) of section 24 will apply only to a legal agreement which is duly registered in accordance with section 55 (1) of the said Act of 1999. In short the contention is twofold. First is that as the leave and licence agreement has not been registered, clause (b) of explanation to section 24 will not apply as it applies only to a registered agreement. The second contention is that as admittedly there is non registration, in view of subsection 2 of section 55 of the said act of 1955, it will be open for a licensee to plead that he was a tenant in respect of the suit premises and not merely a licensee.”

6. Hence, there is no question of entertaining the civil application during pendency of the Writ Petition. He submits that the respondent landlord is ready and willing to make a statement that he will not create any third party right, title interest in respect of the suit premises till hearing and final disposal of the Writ Petition. Statement is accepted.

7. Heard both sides. It is to be noted that, in the present proceedings, admittedly, the respondent executed the order passed by the learned Commissioner by following due process of law. The possession was taken by them on 13/07/2015. Whether the application filed by the respondent under the said Act is maintainable or not, can be decided at the time of deciding the Writ Petition. Considering these facts, I do not find any substance in the civil application. Same stands rejected.

(K.K. TATED, J.)