IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Writ Petition NO. 7950 OF 2015

Rajendra Kumar Rooplal Gihara ...Petitioner
Versus
Ramdular Kaleshu Thakur
And Anr ...Respondents

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Mr.Nitin R. Gandhi, Advocate for the Petitioner.
Mr. Akhilesh Dubey, a/w. Vagish Mishra, Ms. Rani Dubey & Ritika Gupta i/b. M/s. Law Counsellors, Advocate for Respondent No.1.

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CORAM : R. G. KETKAR, J.

DATE : 28th July, 2016

P.C.

1. Heard Mr. N.R. Gandhi, learned Counsel for the petitioner and Mr. Akhilesh Dubey, 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 19.3.2013 passed by the Competent Authority, Konkan Division, Mumbai (for short, 'Competent Authority') in Application No.35/2009 as also the judgment and order dated 12.6.2015 passed by the Additional Commissioner, Konkan Division, Mumbai (for short, 'Commissioner') in Revision under Section 44 of the

Maharashtra Rent Control Act, 1999 (for short, 'Act'). The Competent Authority allowed the application filed by respondent No.1 under Section 24 of the Act and directed the petitioner herein to hand over the vacant and peaceful possession of room No.10, Charkop (I), Vishveshwar C.H.S. Ltd., Plot No.160, Sector 1, Charkop, Kandivali (W), Mumbai 400 067(for short, 'suit premises') to the first respondent. The petitioner is also directed to pay Rs.3,100/- per month from June, 2007 till vacant possession of the suit premises is delivered to respondent No.1. By order dated 12.6.2015 the Commissioner dismissed the Revision Application. It is against these decisions, the petitioner has instituted the present Petition.

3. In support of this petition, Mr.Gandhi strenuously contended that by agreement of sale dated 30.9.2010 entered into between respondent No.1 and the petitioner herein, respondent No.1 agreed to sell the suit premises to the petitioner for consideration of Rs.6,35,000/-. In fact the Memorandum of Understanding was also executed between the parties on 29.7.2006. The petitioner has instituted the suit for specific performance of the agreement of sale as also M.O.U. and the suit

is pending. Out of the agreed consideration of Rs.6,35,000/-, the petitioner has paid Rs.1,25,000/-. Apart from that he submitted that S.C. Suit No.893/2007 is pending in the City Civil Court at Dindoshi and S.C. Suit No.1121/2011. He, therefore, submitted that the impugned orders may be set aside or in any case possession of the petitioner may be protected during pendency of the suits.

4. On the other hand Mr. Dubey supported the impugned orders. He submitted that the Authorities below have considered the fact that respondent No.1 is the owner of the suit premises and that leave and licence agreements were executed on 1.6.2003 and 30.5.2004. In the application filed by the petitioner seeking leave to defend as also in the written statement, he accepted that he had taken the suit premises on leave and licence basis from the first respondent. In view of explanation (b) to Section 24(3) of the Act, the agreement of licence in writing is conclusive evidence of the facts stated therein. He further states that after the possession is received by respondent No.1, he will neither create third party interest nor part with the possession of the suit premises. Statements made by Mr. Dubey is accepted.

5. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, the petitioner came with the case that M.O.U. was executed on 29.7.2006 as also agreement of sale was executed between the parties on 30.9.2010. The petitioner came with the case that respondent No.1 agreed to sale the suit premises for total consideration of Rs.6,25,000/-. The petitioner claims that he has paid entire consideration shown in the agreement to sell. The fact, however, remains that the suit for specific performance filed by the plaintiff was earlier dismissed. In paragraph-4, the Commissioner had noted that the petitioner had approached the City Civil Court at Dindoshi and filed application for injunction. That application was rejected and the suit was also eventually dismissed. It, however, appears that the other suits filed by the petitioner, namely, S.C. Suit No.893/2007 and 1121/2011 are pending and there is no interim order in favour of the petitioner. Section 24(3) reads thus :

> "24. Landlord entitled to recover possession of premises given on licence on expiry.-
> (1) .....
> (2) .....
> (3) The Competent Authority shall not entertain any claim of whatever nature from any

other person who is not a licensee according to the agreement of licence.

Explanation.-- For the purposes of this section,--
(a) the expression "landlord" includes a successor-in-interest who becomes the landlord of the premises as a result of death of such landlord; but does not include a tenant or a sub-tenant who has given premises on licence;
(b) an agreement of licence in writing shall be conclusive evidence of the fact stated therein."

6. Perusal of explanation (b) to Section 24(3) shows that the agreement of licence in writing shall be conclusive evidence of facts stated therein. As noted earlier, in the application for leave to defend and in the written statement, the petitioner has accepted that he had taken the suit premises on leave and licence basis from the first respondent. In view thereof, I 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. *Prima facie* at this stage only on the basis of M.O.U. dated 29.7.2006 and agreement of sale dated 30.9.2010, the petitioner cannot claim to be owner of the suit premises. Hence, Petition fails and the same is dismissed. However, respondent No.1 shall not create third party interest nor part with the possession after receiving the possesion of the suit premises during pendency of the suit. Respondent No.1 is permitted to withdraw the arrears of

compensation deposited by the petitioner in this Court unconditionally. The Court seized of the suit instituted by the petitioner for specific performance of agreement of sale shall decide the same uninfluenced by the observations made in the impugned orders and this order. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)