

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 9666 OF 2016

Mrs. Vimla Shyam Bhatia	...Petitioner
<i>Versus</i>	
Sigfriede Infotech Private Limited	...Respondent

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Mr.G.S. Godbole, Senior Advocate i/b. Dastur Kalambi & Associates, for the Petitioner.
Mr. Pravin Samdhani, Senior Advocate a/w. Mayur Khandeparkar i/b. Prakash & Co. for the Respondent.
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CORAM : R. G. KETKAR, J.

DATE : 22nd August, 2016

P.C.

1. Heard Mr.G.S. Godbole, learned Senior Counsel and Mr.Pravin Samdhani, learned Senior Counsel for the respondent, at length.
2. Rule. M/s.Prakash & Company waives service. At the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.
3. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the orders dated 1.6.2016 and 14.7.2016 passed by the Additional Commissioner, Konkan Division, Mumbai (for short, 'Commissioner'). By order dated 1.6.2016, the

Commissioner stayed the order dated 9.5.2016 passed by the Competent Authority, Konkan Division, Mumbai (for short, 'Competent Authority') in Case No.64/2015. By subsequent order dated 14.7.2016 the Commissioner has adjourned the matter to 19.9.2016.

4. The petitioner has instituted the proceedings against the respondent under Section 24 of the Maharashtra Rent Control Act, 1999 (for short, 'Act') *inter alia* contending that the registered leave and licence agreement was executed between the parties on 21.10.2012. The licence was for a period of 33 months from 21.9.2012 to 20.6.2015. The leave and licence agreement was in respect of Flat No.281, admeasuring about 2802 sq. ft. built up area on the 28th Floor, Tanhee Heights Co-operative Housing Society Ltd. situate at Petit Hall, "A" Building, 66 Nepean Sea Road, Mumbai – 400 006 along with two stilt car parking space in the building compound (for short, 'suit premises'). The agreed license fee/compensation was Rs.3,75,000/- per month. The petitioner claims possession on the ground that the licence period has expired. By order dated 9.5.2016, the Competent Authority directed the respondent to hand over possession to the petitioner and also to pay Rs.7,50,000/- per month from 21.6.2015 till vacant possession of the suit premises is handed over to the petitioner.

5. Aggrieved by that decision, the respondent instituted revision under Section 24 of the Act. By order dated 1.6.2016, the Commissioner stayed the order passed by the Competent Authority till 14.7.2016. By order dated 14.7.2016, the stay was extended and the Revision is fixed on 19.9.2016. The grievance of the petitioner is that the Commissioner has granted blanket stay to the order of the Competent Authority.

6. In support of this Petition, Mr. Godbole invited my attention to Clauses-3, 4 and 6 of the leave and licence agreement as also clause (2) of the operative part of the order of the Competent Authority dated 9.5.2016. He submitted that the agreed leave and licence fee is Rs.3,75,000/-, as is evident from clause-4 of the leave and licence agreement. While allowing the application under Section 24 of the Act, the Competent Authority directed the respondent to pay Rs.7,50,000/- per month from 21.6.2015 till vacant possession is handed over to the petitioner. As against this, the Commissioner granted blanket stay without imposing any condition. He relied upon Section 24(2) of the Act to contend that the licensee who does not deliver possession of the premises to the landlord on expiry of the period of licence and continues to be in possession of the licensed premises till he is dispossessed by the Competent Authority shall be liable to pay damages at double the rate of the licence fee or charge of the premises

fixed under the agreement of licence. He, therefore, submitted that the Commissioner was not justified in granting blanket stay.

7. On the other hand Mr.Samdhani submitted that no case is made out for quashing the impugned orders as the revision is pending for disposal. In any case, he submitted that while objecting continuation of stay, the petitioner has prayed for direction against the respondent to deposit the amount of Rs.3,00,000/- per month from 21.6.2015. He submitted that as the petitioner has prayed for direction for depositing amount of Rs.3,00,000/-, the respondent is ready and willing to pay to the petitioner an amount @ Rs.3,00,000/- per month from 21.6.2015 within four weeks from today.

8. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. Perusal of the leave and licence agreement shows that it is a registered instrument. Clause-4 of the leave and licence agreement provides for payment of compensation @ Rs.3,75,000/-. Section 24 so far as the controversy in the present case is concerned, reads thus :

“24. Landlord entitled to recover possession of premises given on licence on expiry.-

(1)

(2) Any licensee who does not deliver

possession of the premises to the landlord on expiry of the period of licence and continues to be in possession of the licensed premises till he is dispossessed by the Competent Authority shall be liable to pay damages at double the rate of the licence fee or charge of the premises fixed under the agreement of licence.

(3)

Explanation.- For the purposes of this section,-

(a)

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

9. Perusal of clause (2) of the operative part of the order of Competent Authority shows that the Competent Authority directed the respondent to pay Rs.7,50,000/- from 21.6.2015 till vacant possession of the premises is handed over to the petitioner. At the same time, perusal of paragraph-6 and prayer clause (a) of the objection raised by the petitioner for continuation of stay shows that the petitioner has sought direction against the respondent to deposit amount @ Rs.3,00,000/- per month from 21.6.2015.

10. In view of *Explanation (b)* to Section 24(3), an agreement of licence in writing is conclusive evidence of the fact stated therein. Clause-4 of the leave and licence agreement reads thus :

“4. MONTHLY LICENSE FEE:

The license fee/compensation for the occupation and use of the Licensed

Premises shall be Rs.3,75,000/- (Rupees Three Lac Seventy Five Thousand Only) per month (hereinafter referred to as the "Monthly License Fee") for the Licensed Period. Tax to be deducted at source, as applicable, will be deducted from the said Monthly License Fee by the Licensee and the remaining will be paid to the Licensor. The License Fee for the first 11 months of the License Period shall be paid to the Licensor on the execution of these presents and thereafter the license fee shall be payable in advance for every 11 months during the term of the Agreement."

11. Having due regard to the direction contained in clause (2) of the operative part of the order as also prayer clause (a) made by the petitioner in objection to continuation of further stay as also explanation (b) to Section 24(3), in my opinion, interest of justice will be served by directing the respondent to pay compensation to the petitioner @ Rs.3,75,000/- per month from 21.6.2015 till hearing and final disposal of revision by the Commissioner. Let the arrears of compensation @ Rs.3,75,000/- per month be paid to the petitioner within two weeks from today.

12. It has come to the notice of this Court that while entertaining Revision Applications invariably the Commissioner grants blanket stay to the order of the

Competent Authority. It has, therefore, become necessary for this Court to deal with the orders routinely passed by the Commissioner granting blanket stay from time to time. In my opinion, this is patently in the teeth of Section 24(2) of the Act as also Order XLI Rule 5 of Code of Civil Procedure, 1908. The Commissioner while considering the prayer for stay has to bear in mind the principles laid down by the Apex Court in the case of ***Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd., (2005) 1 SCC 705*** as also ***State of Maharashtra and another v. Super Max International Private Limited and others, (2009) 9 SCC 772***. In other words, the Commissioner is not justified in granting blanket stay. The Commissioner may consider granting stay subject to revision applicant depositing amount as per the agreed licence fee or as per Section 24(2) of the Act depending upon the fact situation obtaining in each case. In any case, the Commissioner is not justified in granting blanket stay to the order of the Competent Authority. Registry is directed to circulate this order to the Commissioners taking Revision application.

13. Hence, following order:

- [i] The impugned orders are modified by granting stay to the order of the Competent Authority subject to the respondent paying arrears of Rs.3,75,000/- per month from 21.6.2016 till 31.8.2016 within two

weeks from today to the petitioner directly. The respondent shall go on paying compensation @ Rs.3,75,000/- per month to the petitioner directly till disposal of Revision Application before the Commissioner before 10th day of the next month/s.

- [ii] The Commissioner is requested to dispose of the Revision Application within four weeks from production of the authenticated copy of this order.
- [iii] All contentions of the parties on merits are expressly kept open.
- [iv] Rule is made absolute in aforesaid terms with no order as to costs.
- [v] Registry is directed to circulate this order to the Commissioners deciding Revision Applications arising from orders of Competent Authority.

(R. G. KETKAR, J.)