

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No. 8338 OF 2013

Mr. Babubhai Nathalal Mistry ...Petitioner
Versus
Mrs. Geetaben Deepak Joshi ...Respondent

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Mr.J.G. Damani, Advocate for the Petitioner.
Mr. Swapnil Ambure a/w. Mikhail Dey i/b. Dinesh Tiwari &
Associates, Advocate for the Respondent.

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CORAM : R. G. KETKAR, J.
DATE : 29th August, 2016

P.C.

1. Heard Mr. J.G. Damani, learned Counsel for the petitioner and Mr.Swapnil Ambure, learned Counsel for the respondent, at length.

2. By this petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 18.12.2012 passed by the Competent Authority, Konkan Division, Mumbai (for short, 'Competent Authority') in Case No.7/2010 as also judgment and order dated 27.6.2013 passed by the Competent Authority dismissing the Review Application filed by the petitioner herein.

3. By order dated 18.12.2012, the Competent Authority allowed the application made by the respondent

for directing the petitioner herein to pay the maintenance charges of the society. The Competent Authority directed the petitioner herein to deposit Rs.43,88,000/- as per the calculation at Exhibit-B towards the arrears of compensation amount within ten weeks from the date of the order and further continue to deposit compensation @ Rs.3,000/- per month from November, 2012 and also pay the maintenance charges till final disposal of the proceedings.

4. In support of this Petition, Mr. Damani strenuously contended that the respondent relied upon the alleged leave and licence agreement dated 14.9.2001 between Mr. Deepak Joshi as a licensor and the petitioner herein as a licensee. Clause-3 provided that the licensee agreed to give security deposit of Rs.40,000/- to the licensor and the licensor had agreed to refund the amount without any interest upon expiry of the agreement and vacating the premises. Licensee has also agreed to give monthly compensation of Rs.3,000/- per month on or before 10th day of every month till occupancy of said premises. It is alleged that the petitioner licensee had paid Rs.40,000/- towards the security deposit Rs.20,000/- in cash and remaining amount by cheque No.395187 dated 11.10.2001 drawn on Development Credit Bank, Mahim Branch.

5. Mr. Damani submitted that the petitioner herein

never executed any leave and licence agreement. In fact in March, 2003, Deepak had agreed to sell the suit premises, namely, flat No.503A, Pooja Dham CHS Ltd., Suhasini Pawaskar Road, Dahisar (East), Mumbai – 400 068 for a consideration of Rs.5,51,000/-. On 25.4.2003, the petitioner had made part payment by way of four demand drafts all dated 25.4.2003 drawn in favour of Deepak Joshi. Between July, 2003 and December, 2003, the petitioner had made payment of Rs.4,00,000/- and the original share certificate is given by Deepak Joshi to the petitioner. Between 18.7.2005 and 2007, the petitioner had paid the balance consideration.

6. He submitted that as the conveyance was not executed in favour of the present petitioner, he has instituted Suit No.51/2009 on the Original Side of this Court for specific performance of the contract. In view of enhancement of the pecuniary jurisdiction, the suit is now transferred to City Civil Court, Bombay and renumbered as Suit No.390/2015. He has invited my attention to the orders dated 16.4.2009 and 24.8.2009 passed by the learned Single Judges of this Court in Notice of Motion No.429/2009 taken out in Suit No.51/2009. He submitted that it is only after passing of the orders by this Court in the Suit filed on the Original Side of this Court, the respondent has instituted Application No.7/2010 under

Section 24 of the Maharashtra Rent Control Act, 1999 (for short, 'Act') for recovery of possession of the suit premises.

7. He submitted that though it is alleged that the leave and licence was executed on 14.9.2001, at no point of time, the respondent issued any notice. He did not raise demand for payment of compensation @ Rs.3,000/- per month. He submitted that in fact the respondents herein consented for granting leave to defend the proceedings under Section 24 of the Act and accordingly by order dated 25.3.2010 the Competent Authority granted leave to defend. The evidence is being recorded before the Competent Authority. He also invited my attention to the application made by the respondents seeking direction against the petitioner to pay maintenance charges and in particular prayers in that application. He also invited my attention to the reply filed by the petitioner as also paragraph-2 of the order dated 18.12.2012. In paragraph-2, the Competent Authority specifically recorded the contention advanced on behalf of the petitioner that he is making regular payment of society maintenance charges and taxes since the agreement of sale was entered into in the year 2003. He has also relied upon the statement showing payments made by the petitioner towards the maintenance charges of the society as also certificate dated 18.8.2016 issued by the society showing dues 'Nil' towards society maintenance

charges.

8. Mr. Damani states that the petitioner is present in Court. Upon taking instructions from him, he states that without prejudice to the rights and contentions raised by the present petitioner in the suit for specific performance as also in the pending proceedings before the Competent Authority, the petitioner will deposit Rs.5,40,000/- being the amount of compensation from 2001 to 2016 (16 years compensation) within eight weeks from today in the office of the Competent Authority, under intimation in writing to the Advocate for the respondent. He assures that the petitioner will not seek further extension of time for depositing said amount. Upon depositing said amount in the office of the Competent Authority, the Competent Authority may be directed to invest that amount in any Nationalized Bank for suitable period till disposal of the proceedings under Section 24 of the Act. While disposing of the proceedings, the Competent Authority may be directed to pass appropriate order in relation to the amount deposited by the petitioner along with accrued interest.

9. On the other hand, Mr. Ambure submitted that as the Competent Authority has not recorded any finding as regards the contention as advanced by the petitioner about payment of society maintenance charges and taxes regularly, the impugned orders may be set aside and the

application may be ordered to be heard along with the main proceedings. He further submitted that the Competent Authority may be directed to dispose of the proceedings in a time bound manner. In view thereof, by consent of the parties, Petition is disposed of in following terms:

- [i] Impugned orders dated 18.12.2012 and 27.6.2013 passed by the Competent Authority, Konkan Division, Mumbai in Case No.7/2010 are quashed and set aside. Application dated 2.9.2011 made by the respondent for directing the petitioner herein to pay maintenance charges, is restored to the file of Competent Authority. Said application shall be heard along with the main proceedings.
- [ii] Without prejudice to the rights and contentions of the petitioner in suit for specific performance as also in the proceedings under Section 24 of the Act pending before the Competent Authority, the petitioner shall deposit Rs.5,40,000/- in the office of the Competent Authority within eight weeks from today. The petitioner shall not pray for extension of time for depositing that amount. Amount shall be deposited under intimation in writing to the respondent's Advocate.
- [iii] Upon depositing the amount, the Competent

Authority shall invest the amount in Nationalized bank for a suitable period so as to cover the time for disposing of the proceedings under Section 24 of the Act. The Competent Authority shall not permit respondents to withdraw the amount so deposited and pass appropriate order while disposing of the proceedings and permit the successful party to withdraw the amount along with accrued interest.

- [iv] The Competent Authority is requested to dispose of the main proceedings within six months from today.
- [v] All contentions of the parties on merits are expressly kept open.
- [vi] It is made clear that the Competent Authority will proceed with the proceedings uninfluenced by the observations made hereinabove as also in the impugned orders.
- [vii] Rule is made absolute in aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)