

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO.909 OF 2014

Mrs. Asma Begum Mohammed
Siddique Shaikh

Applicant/
Petitioner

Vs

1. Mrs Farida Amin Tharani and
Ors.

.. Respondents

Mr. G.S.Godbole, Senior Advocate, a/w Jai Kanade, Jayendra P. Kapadia, Akshay Vora, Tapan Agarwal i/b M/s. Little & Co., Advocates for Applicant/Petitioner.

Mr. Rakesh Kumar a/w I.R.Shukla i/b M/s Legal Vision, Advocates for Respondent no.1.

Mr. Mandar Soman, Advocate for Respondent no.4.

CORAM :	R.G.KETKAR,J.
RESERVED ON:	25/10/2016
PRONOUNCED ON:	06/12/2016.

ORDER:

Heard Mr. G.S.Godbole, learned senior counsel for the applicant, Mr. Rakesh Kumar, learned counsel for respondent no.1 and Mr.Mandar Soman, learned counsel for newly added respondent no.4 at length.

2. By this Application under section 115 of the Code of Civil Procedure, 1908, (for short, 'C.P.C'), the applicant has challenged:

(i) the judgment and order dated 20.10.2012 passed by the Competent Authority, Konkan Division, Mumbai (for short, 'Competent Authority') in Application No.60 of 2010;

- (ii) the judgment and order dated 14.8.2014 passed by the Addl. Commissioner, Konkan Division, Mumbai (for short, 'Commissioner') in Revision Application No.624 of 2012 filed under Section 44 of the Maharashtra Rent Control Act, 1999 (for short.'Act');
- (iii) warrant of possession dated 8.8.2016 issued in respect of Flats No. 501 and 601, situate at Amen Apartment-II, Church Road, Mumbai -400058 (for short, 'suit premises'); and
- (iv) for restoration of possession of the suit premises to the applicant.

3. The applicant has also prayed for declaration that her dispossession from the suit premises on 23.8.2016 was illegal. During the pendency of the application, the applicant has prayed for appointment of a Court Receiver in respect of suit premises on such terms and conditions as this Court deems fit and proper. In the alternative, the applicant has prayed for injunction restraining respondents no.1 and 4 from (a) parting with possession and creating third party interest in the suit premises in any manner whatsoever, as also (b) altering and/or changing the nature of the suit premises.

4. S/Shri Rakesh Kumar and Soman raised a preliminary objection as regards maintainability of this Civil Revision

Application under Section 115 of C.P.C. They submitted that respondent no.1 has initiated proceedings under section 24 of the Act before the Competent Authority. By order dated 20.10.2012, the Competent Authority allowed the application made by respondent no.1. Aggrieved by that decision, the applicant instituted Revision Application under Section 44 of the Act. The said Revision Application was dismissed. The applicant, therefore, cannot institute second Revision Application in this Court.

5. Mr Godbole orally prayed for leave to convert this Civil Revision Application into Writ Petition under Article 227 of the Constitution of India. He relied upon the decision of the Apex Court in the case of **Col. Anil Kak Vs. Municipal Corporation, Indore, (2005) 12 SCC 734** to contend that even this Court, on its own motion and even without a motion made in that behalf by the applicant, can convert the same as a proceedings under Article 227 of the Constitution of India. In view of the decision of Col. Anil Kak, leave to convert Civil Revision into Writ Petition under Article 227 of the Constitution of India is granted. Amendment shall be carried out **forthwith**.

6. Rule. Learned counsel waive service for the respective respondent. In view of orders dated 11.9.2014 and 13.10.2016, Rule is made returnable forthwith and Petition is taken up for final

hearing. The relevant and material facts, giving rise to filing of the present petition, briefly stated, are as under.

7. On 17.2.2005, document styled as Leave and Licence Agreement was entered into by and between respondent no.1- Ms Farida A Tharani as a licensor and petitioner -Ms Asma Begum Mohd Siddique as a Licensee. Clause (2) thereof provided that the leave and licence agreement was for a period of eleven months commencing from 17.2.2005 and ending on 16.1.2006. Clause (3) recited that there is no monthly compensation mutually agreed by licensor and licensee. Clause (12) recorded that the petitioner-licensee shall deposit with respondent no.1 a sum of Rs. 10,00,000/- (Rs. 10 Lakhs only) as a security deposit, free of interest, which will be returned to the licensee on the expiry of the agreement or on notice of one month in advance for vacation of premises and against vacant and peaceful possession of the suit premises after deducting the cost of the damages to the fixtures/fittings and outstanding electricity bills, if any. Clause (17) thereof recited that the licensee agrees to vacate and hand over possession on or before expiry of the agreement. If she fails to vacate and handover the premises to the licensor on expiry of the agreement, she agreed to pay Rs.500/- as damages per day. Clause (20) recited that in the event of the licensee desiring to vacate the suit premises before the expiry, the licensor shall

allow the licensee to vacate after paying the compensation for the month unused and at the same time the licensor shall forthwith refund the deposit of Rs.10,00000/-. The licensee shall, however, give one month's notice of her intention to vacate the premises earlier.

8. On 1.6.2010 respondent no.1 caused to issue notice to the petitioner through Advocate revoking the leave and licence agreement and calling upon the petitioner to vacate the suit premises and hand over possession within 7 days from the date of receipt of the notice. Respondent no.1 also called upon the petitioner to pay an amount of Rs.55000/- towards balance licence fees and other outgoings.

9. The petitioner did not give reply to the notice. As the petitioner did not accede to the requisition made in the notice dated 1.6.2010, respondent no.1 instituted proceedings under section 24 of the Act before the Competent Authority on 22.10.2010. On 9.12.2010 the petitioner filed application for leave to defend the proceedings as contemplated by Section 43(4)(a) of the Act. The petitioner, inter-alia, contended that in the year 2005 the suit premises was not standing in the name of respondent no.1. In that year, there was a litigation between the financier of the builder on one hand and the builder on the other. The builder is husband of the first respondent. It was agreed that

the suit premises will be purchased by the petitioner for a total consideration of Rs.95,00,000/-. The petitioner paid Rs. 60,00,000/- by cheques to the first respondent and to that effect there are entries in Bank Pass books of different Banks which indicate that cheques were encashed by the first respondent.

10. The petitioner further contended that it was agreed between the parties that the sale transaction will be completed within 11 months. Respondent no.1, however, on one pretext or other, did not complete the sale transaction even though the entire consideration of Rs. 95,00,000/- was paid by the petitioner to the first respondent. Because of the dispute pending between the husband of the first respondent on one hand and the financier of the builder on the other, the sale was delayed. As the prices have escalated, respondent no.1 has instituted the proceedings. In fact, there is a separate agreement for sale entered into between the parties for the amount of Rs. 95,00,000/- which was not registered and copy of the said agreement is retained by the first respondent on the pretext that the dispute is pending between financier and builder.

11. By order dated 12.8.2011, the Competent Authority granted leave to defend by observing that Clauses (3) and (20) of the Leave and Licence Agreement are contradictory to each other and in order to gather the exact intention of the parties at the

time of agreement, the recording of evidence is necessary. There are triable issues of law and facts involved in the matter and accordingly it is just and proper to grant leave to defend the application. Respondent no.1 has not challenged this order.

12. The petitioner has thereafter filed Written Statement on 19.10.2011 resisting proceedings under Section 24 of the Act. The petitioner substantially reiterated the contentions which were raised in the application for leave to defend as regards the real transaction between the parties.

13. On 21.7.2012, the Competent Authority framed the issues and adjourned the matter for evidence of the first respondent to 31.7.2012. On 31.7.2012, respondent no.1 filed application, inter alia, praying for direction to the petitioner herein to pay a sum of Rs.24,35,000/- as per the statement of calculations annexed at Exhibit-2. Pending the hearing and final disposal of the application, respondent no.1 further prayed for direction to the petitioner to pay a sum of Rs. 85,000/- per month from 1.9.2012 onwards. The petitioner resisted that application by filing reply on 21.8.2012. Respondent no.1 filed affidavit-in-rejoinder on 6.9.2012 and also written arguments in support of her application for depositing arrears. The petitioner filed affidavit in sur-rejoinder on 25.9.2012. Roznama of 25.9.2012 recorded that the matter was adjourned for arguments to 6.10.2012 at 12.30 pm.

Roznama of 6.10.2012 reads thus:

“Applicant present with Advocate. Respondent present. Advocate for respondent absent. Respondents are not ready for argument, given sufficient time for argument. Matter kept for order. Order passed. Case closed for orders.”

On the same day, i.e. 6.10.2012, the Competent Authority passed order on the application filed by respondent no.1 for directing the petitioner to deposit licence fee to the effect that the interim application for payment/deposit will be decided along with eviction application. On 20.10.2012, the Competent Authority allowed the proceedings filed by the first respondent under Section 24 of the Act. The Competent Authority directed the petitioner to hand over vacant and peaceful possession of the suit premises to the first respondent and further to pay Rs. 85,000/- per month from June, 2010 to the first respondent till handing over vacant possession. The Competent Authority also reserved liberty to the first respondent to appropriate the amount of security deposit.

14. Aggrieved by this order, the petitioner instituted Revision Application under Section 44 of the Act before the Commissioner in November, 2012. The petitioner attacked the order of the Competent Authority on various grounds including the procedure adopted by the Competent authority while deciding the proceedings under Section 24 of the Act. In substance, the petitioner contended that once the Competent Authority granted

leave to defend, it has to follow the procedure mandated under section 43(4)(c) of the Act. In fact, the Competent Authority had also framed issues as is reflected in the Rozanam of 21.7.2012 and the matter was adjourned for recording evidence of the first respondent to 31.7.2012. It was also contended that basically the matter was posted for arguments on the application made by the first respondent for direction to the petitioner to deposit arrears. On 6.10.2012 the Competent Authority passed order on the application for depositing the arrears to the effect that the said application shall be decided along with the eviction application. It was, therefore, contended that the Competent Authority decided the proceedings under Section 24 of the Act in the teeth of provisions of Section 43(4)(c) and 43(5) which amounts to miscarriage of justice as also against the principles of natural justice.

15. Respondent no.1 opposed the Revision Application by filing reply dated 29.11.2012. On 17.12.2012, the Commissioner heard Advocates for the parties. Roznama of 17.12.2012 records that Advocates for both the parties agreed to maintain status-quo till next date of hearing. The next date of hearing was fixed on 5.2.2013. On 15.4.2013, the Roznama records order of the Commissioner to the following effect:

“Applicant absent. Learned Advocate for respondent pleaded that till the final hearing of the case, the applicant (petitioner herein) be directed to deposit amount as per the order

of the Competent Authority.

Stay to continue till next date of hearing subject to deposit of the amount as per the order of Competent Authority (Rs.85,000/- from June, 2010 till March, 2013) within four weeks of time.

Final hearing is fixed on 6.6.2013. Call R&P."

16. Roznama of 20.6.2013 reads thus;

"Learned Advocate for Respondent (Advocate Rakesh Kumar) present and argued about deposit of amount ordered by the Competent Authority as noted by my predecessor on 15.4.2013. He opposed to continue the stay granted without deposit of amount as directed. Extension should be as per order dated 15.4.2013, he further added. Son of applicant - Riaz present and argues that the stay was also to deposit of money. The matter will be heard finally on 25.7.2013. No further dates. Stay continued without deposit of amount.

Sd/-
20.6.13"

17. Respondent no.1 instituted Writ Petition No. 6415 of 2013 challenging the order dated 20.6.2013 continuing stay without deposit of amount. By order dated 3.7.2013, this Court quashed and set aside orders dated 15.4.2013 and 20.6.2013. This Court directed the Commissioner to hear the stay application on 25.7.2013 afresh after hearing both the parties. On 25.7.2013 the Commissioner passed the following order:-

" Both the parties are present through their Advocates. There was Writ Petition No. 6415 of 2013 preferred by the respondent (petitioner herein). Honourable High Court had directed this authority to hear the stay matter afresh. Hence, hearing.

After hearing the parties, I came to the conclusion that the applicant (petitioner herein) to deposit Rs. 85,000/- per month from June 2010 till July 2013 in lumpsum with Competent Authority and thereafter monthly deposit within 15 days. Next hearing 23.9.2013.

Sd/-
25.7.2013"

18. Aggrieved by this order, the petitioner instituted Writ Petition No. 9403 of 2013. After hearing both the sides, order dated 25.7.2013 was set aside on the ground that the said order did not record any reasons. The Commissioner was requested to decide the stay application within two weeks from the date of appearance of the parties which was fixed on 18.11.2013.

19. On 3.12.2013 the Commissioner heard the parties on stay application. By consent of the parties, the Court Commissioner was appointed for measurement of area of the suit premises through City Survey Officer. Photography in presence of the parties/counsel was permitted and by consent, the matter was adjourned to 19.12.2013 at 14.30 hours. On 11.2.2014, by consent of the parties, the Commissioner directed the petitioner herein to deposit 50% of arrears at the rate of Rs. 55000/- per month from 10.6.2010 in the following manner.

“50% within 10 days before the Competent Authority and remaining within 20 days.”

Subject to this condition, the Commissioner stayed the order of the Competent Authority till 13.3.2013. It was also clarified that the said deposit shall be without prejudice and will not have any bearing on the merits of the case.

20. On 13.3.2014, the petitioner filed application for review/modification of order dated 11.2.2014. On 7.5.2014, the Commissioner rejected the application for review/modification

and recorded that the petitioner herein has not complied the order dated 11.2.2014. The Commissioner adjourned the matter to 9.5.2014 as a last chance. On 9.5.2014, the Commissioner passed order recording that the petitioner did not comply the previous order by depositing the amount and, therefore, rejected the application for stay. On the application made by Advocate of the petitioner, one more chance was granted and the matter was adjourned to 12.6.2014 with clear understanding that on that date the matter will be heard finally without any excuse. The petitioner instituted Writ Petition No. 5802 of 2014 in this Court challenging orders dated 11.2.2014 and 7.5.2014. On 23.6.2014, this Court directed office to place the petition for admission on 4.7.2014. On 10.7.2014, the application was made by the petitioner for adjourning the matter after 6.8.2014. Roznama of 10.7.2014 recorded presence of the petitioner as also respondent no.1's Advocate. It was also recorded that earlier last chance was given and again the petitioner is seeking time. As there is no stay, the matter is reserved for orders. It also recorded that the petitioner left without signing Roznama. Ultimately, by order dated 14.8.2014 the Commissioner dismissed Revision Application thereby upholding the order dated 20.12.2012 passed by the Competent Authority. The Commissioner directed the petitioner to hand over vacant and peaceful possession of the suit premises to the first respondent

and further pay arrears at the rate of Rs.85,000/- per month from June 2010 till handing over possession.

21. Aggrieved by these decisions, the petitioner instituted Civil Revision Application No. 909 of 2014 in this Court. On 11.9.2014, after noting the submissions advanced on behalf of the petitioner, notice was issued to the first respondent returnable on 8.10.2014. Notice was to indicate that subject to the time constraint and convenience of the Court, Petition will be disposed of finally at the stage of admission. Notice was to further indicate that despite notice, if the respondents fail to appear, the Court will proceed to decide the petition on its own merits. In the meantime, subject to the petitioner neither creating third party interest nor parting with possession of the suit premises, ad-interim order in terms of prayer clause (d) was granted. Matter was thereafter heard for admission on 1.4.2016. This Court admitted CRA and granted interim relief in terms of prayer clause (d) subject to the petitioner depositing entire amount as per the order dated 11.2.2014 passed by the Commissioner within three months. It also directed the petitioner to continue to deposit Rs. 55,000/- from May, 2016 on or before 10th day of each month. If amount is deposited within the stipulated time, Registry was directed to invest the said amount in a fixed deposit account of any nationalized Bank initially for a period of one year and the

same shall be renewed from time to time till further orders. It was made clear that in case of any default in payment of the amount, interim protection granted shall stand vacated without referring the matter back to the Court. The petitioner was also directed to pay monthly charges in respect of the suit premises regularly to the society without prejudice to the rights and contentions of the parties.

22. On 23.6.2016 at the request of the petitioner, the matter was taken up in production board. In paragraph 2 of that order, statement made on behalf of the petitioner that she has deposited the arrears in terms of order dated 1.4.2016 was recorded. Prayer made on behalf of the petitioner for extension of one week's time for depositing compensation for June 2016 by way of Demand Draft and that the petitioner will go on depositing the amount at the rate of Rs.55,000/- per month in this Court by way of Demand Draft from July, 2016 onwards on or before 10th day of each succeeding month was noted. In view thereof, the time stipulated in paragraph 4 of the order dated 1.4.2016 was extended as and by way of exception. Office was directed to accept deposit, if made within one week.

23. The matter was thereafter heard on 1.7.2016. On behalf of the petitioner it was pointed out that the statement recorded in the order dated 23.6.2016 to the effect that the applicant has

deposited the arrears in terms of order dated 1.4.2016 was factually incorrect statement. It was clarified that the petitioner did not deposit the arrears in terms of the order dated 1.4.2016. Upon taking instructions from the son of the Petitioner, Mr. Iariyas Shaikh, assurance given to the effect that within two weeks, the petitioner will deposit the arrears in terms of the order dated 1.4.2016 in this court, was recorded. As the notice was not given to other side, office was directed to list the matter for direction at 3 pm on 4.7.2016. On 4.7.2016, on behalf of the petitioner it was stated that the petitioner intends to seek review of order dated 1.4.2016. After recording the statement to that effect, it was clarified that the period stipulated in the order dated 1.4.2016 is not extended.

24. It appears that in pursuance of this, the petitioner has instituted Review Petition No. 10 of 2016 in this Court. As there was delay in filing the Review Petition, Civil Application No. 186 of 2016 was filed. In the meantime, on 13.7.2016 respondent no.1 filed application under Section 45 of the Act for execution of order dated 20.10.2012 passed by the Competent Authority. On 1.8.2016, Civil Application No. 186 of 2016 for condonation of delay of 88 days in filing Review Petition was taken up in production board. On behalf of the first respondent, time was sought for filing affidavit-in-reply. At the request of the first

respondent, the matter was adjourned for three weeks, i.e. 22.8.2016. It is the case of the petitioner that on 8.8.2016, the first respondent obtained warrant of possession without notice to her. On 23.8.2016, the petitioner along with her family members were dispossessed from the suit premises. Panchanama was also drawn to that effect on 23.8.2016. On 26.8.2016, the delay in filing review petition was condoned. Just one day before that, i.e. 25.8.2016 respondent no.1 executed a registered leave and licence agreement in favour of the fourth respondent.

25. The petitioner thereafter filed Civil Application No. 624 of 2016 for amending the proceedings as also for impleadment of the fourth respondent. After hearing both sides, the Civil Application was allowed on 13.10.2016 and the matter was fixed for final hearing on 20.10.2016 at 3 pm. Parties were put to notice that subject to the time constraint and the convenience of Court the matter will be disposed of finally on that date. Accordingly, learned counsel for the parties advanced elaborate submissions.

26. In support of this Petition, Mr. Godbole submitted that order dated 20.10.2012 of the Competent Authority is totally unsustainable. He submitted that admittedly on 12.8.2011 the Competent Authority granted leave to defend. The said order was not challenged by the first respondent. Once leave to

defend is granted, the Competent Authority has to follow procedure laid down under Section 43(4)(c) and 43(5). The Competent Authority has to hold an inquiry by following the practice and procedure of the Court of Small Causes including the recording of evidence. He submitted that on 21.7.2012 the Competent Authority framed issues and adjourned the matter to 31.7.2012 for recording evidence of the first respondent. Instead of leading evidence, the first respondent filed application seeking direction against the petitioner for depositing arrears of compensation. The said application was heard from time to time from 31.7.2012 and ultimately on 6.10.2012 the Competent Authority directed that the said application will be heard along with eviction application. The Competent Authority thereafter should have followed the procedure under Section 43(4)(c) read with 43(5) by calling upon respondent no.1 to lead evidence. However, without recording any evidence, the Competent Authority straightway passed order on 20.10.2012 allowing proceedings under Section 24 of the Act. He invited my attention to Memo of Revision Application wherein these grounds were specifically advanced. The Commissioner, however, did not advert to this aspect. He, therefore, submitted that the orders passed by the Competent Authority and the Commissioner are liable to be set aside as they are passed in gross violation of principles of natural justice and also in the teeth of provisions of

Section 43(4)(c) and 43(5). The impugned orders have led to grave miscarriage of justice.

27. Mr. Godbole relied upon the decision of the Apex Court in the case of ***Prakash H. Jain Vs. Marie Fernandes, (2003) 8 Supreme Court Cases 431*** and in particular paragraphs 10 to 13 thereof. He submitted that the Apex Court has considered the provisions of Chapter VIII of the Act. The Apex Court has held that the Competent Authority constituted under Chapter VIII is not a Court. The Competent Authority constituted under Chapter VIII is a statutory authority created for a definite purpose and to exercise powers in a quasi-judicial manner. He submitted that the petitioner cannot approach the Competent Authority for restitution/restoration of the suit premises as Sections 144 and 151 are not applicable to the Competent Authority.

28. Mr. Godbole relied upon the decision of the Apex Court in ***Gurujoginder Singh Vs. Jaswant Kaur, (1994) 2 SCC 368*** to contend that the newly added respondent no.4 is claiming through the first respondent. He is not a bonafide transferee. He submitted that once the impugned orders are set aside, respondent no.1 who has put respondent no.4 in possession is bound to restore to the petitioner what she had gained by the impugned orders. In short, he submitted that the petitioner is entitled to restitution/restoration of the suit premises after

setting aside the impugned orders.

29. Mr. Godbole has tendered statement of arrears/payment of interim deposit for the period from June, 2010 to August, 2016 which comes to Rs. 40,15,000/-. He has also given Schedule of Payment of arrears of interim deposit setting out therein that Rs. 40,15,000/- will be paid on or before 25.1.2017 subject to orders of this Court and that the petitioner will continue to deposit Rs. 55,000/- p.m. from November, 2016 on or before 10th day of each succeeding month towards interim deposit subject to orders of the Court. Mr. Godbole has also tendered Statement of Arrears /Payment of society charges which is to the tune of Rs. 1,76,400/-. Mr Godbole submitted that the petitioner will pay society charges of RS.1,76,400/- with the society on or before 25.1.2017 under the court orders under protest and will continue to pay monthly charges from November, 2016 upon receipt of society maintenance bill. The said statements are duly signed by the petitioner and the same are taken on record and marked 'X' Collectively for identification.

30. On the other hand, Mr. Kumar appearing for respondent no.1 supported the impugned orders. Mr. Kumar submitted that the Competent Authority and the Commissioner are neither court nor Tribunal. He submitted that petition under Article 227 challenging the orders of the Competent Authority and the

Commissioner is not maintainable. In support of this proposition, he relied upon the following decisions:

- (i) ***Radhey Sham Vs. ChhabiNath*, AIR 2015 SC 3269;**
- (ii) ***Surya Dev Rai Vs. Ram Chander Rai*, (2003) 6 SCC 675,**
- (iii) ***Shalini Shyam Shetty Vs. Rajendra Shankar Patil*, (2010) 8 SCC 329.**

31. Mr. Kumar relied upon the decision of **Shalini Shyam Shetty** (*supra*) to contend that this Court will decline to examine correctness of the orders passed by the authorities below which arise out of purely property disputes between private individuals, namely, licensor and licensee. He submitted that before exercising powers under Article 227, this Court has to find out whether the Commissioner while passing the impugned order on 14.8.2014 has exercised a jurisdiction not vested in him or has declined to exercise jurisdiction vested in him and as a result there has been a gross and manifest failure of justice.

32. Mr. Kumar invited my attention to the prayers made in this petition and submitted that the petitioner has challenged only the order of the Commissioner. In other words, the petitioner has not challenged the order of the Competent Authority. The Court, therefore, cannot examine correctness of the order passed by the Competent Authority. As held by the Apex Court in the case of **Kunhayammed Vs State of Kerala**, AIR 2000 SC 587, this

Court should not examine the correctness of the Commissioner dated 14.8.2014 or the order of the Competent Authority dated 20.10.2012 in petition instituted under Article 227 of the Constitution of India.

33. Mr. Kumar relied upon the decision of the Apex Court in the case of ***S.P.Chengalvaraya Naidu Vs. Jagannath*, AIR 1994 SC 853** and of Delhi High Court in the case of ***D.T.T.D.C Vs. D.R. Mehra and Sons*, AIR 1996 Delhi 351** to contend that “a person who seeks equity must do equity. He must also come to Court with clean hands.” He submitted that in the present case, the petitioner has admitted existence and execution of leave and licence agreement dated 17.2.2005 which came to an end by efflux of time in January, 2006. That apart, the petitioner has also not paid amount since June, 2010. The petitioner is, therefore, not entitled to any equitable relief in exercise of powers under Article 227.

34. Mr. Kumar submitted that the petitioner has consistently flouted orders of the Commissioner. By order dated 3.12.2013 the Court Commissioner was appointed by consent of the parties for taking measurement of the suit premises. The petitioner disobeyed that order. By order dated 11.2.2014, the Commissioner, by consent of the parties, directed the petitioner to deposit amount of Rs. 55,000/- per month. This order is not

obeyed. That apart, the petitioner also failed to abide orders dated 1.4.2016, 23.6.2016 and 1.7.2016 passed by this Court directing her to deposit arrears of compensation. The petitioner is, therefore, not entitled to any equitable relief in exercise of powers under Article 227 and further not entitled to restitution/restoration of the suit premises which is handed over by respondent no.1 to respondent no.4 by legally executing order of eviction. He further submitted that in exercise of powers under Article 227, this Court cannot grant relief of restitution, more so when the order of eviction is legally executed by the first respondent and that the petitioner has failed to abide conditional order passed by this Court.

35. Mr. Kumar further submitted that no prayer is made by the petitioner for remanding the matter to the Commissioner. This Court will, therefore, not remand the matter to either Competent Authority or Commissioner. In support of this submission, he relied upon the decisions in the case of:

- (1) ***State of Punjab Vs. Gram Panchayat*, AIR 2002 SC 1365**; and
- (2) ***Ashwinikumar Patel Vs. Upendra J Patel*, AIR 1999 SC 1125**.

36. Mr. Kumar submitted that in the Roznama dated 6.10.2012 of the Competent Authority, it was recorded that the petitioner

herein is not ready for argument though was given sufficient time for argument. Matter was kept for order. On the same day, order was passed on the application filed by the first respondent for direction to the petitioner to pay arrears of compensation. The Competent Authority directed that interim application for payment/deposit will be decided along with the eviction application. On the same day, i.e. 6.10.2012 the Competent Authority closed for orders the main application under section 24 of the Act. He submitted that Section 43 (4)(a) lays down that the tenant on whom the summons is duly served in the ordinary or by registered post in the manner laid down in sub-section (3) shall not contest the prayer for eviction from the premises, unless within thirty days of the service of summons on him, he files an affidavit stating grounds on which he seeks to contest the application for eviction and obtains leave from the Competent Authority and in default of his appearance in pursuance of the summons or his obtaining such leave, the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant or the licensee as the case may be, and the applicant shall be entitled to an order for eviction on the aforesaid grounds. He submitted that in the present case, the Competent Authority granted leave to defend on 12.8.2011. On 6.10.2012 the Competent Authority recorded that the petitioner herein is not ready for argument, though was

given sufficient time. In view of Section 43(4)(a) as there is default in the appearance of the petitioner after obtaining leave to defend, the statement made by the first respondent in the application for eviction is deemed to be admitted by the petitioner and the first respondent is entitled to an order for eviction. He, therefore, submitted that the authorities below were fully justified in allowing the application under Section 24 of the Act. He relied upon decision in **AMI Merchandising Pvt. Ltd. Vs. State of Maharashtra and others, 2014 (3) Mh.L.J.257.**

37. Mr. Kumar further submitted that even otherwise the petitioner is not entitled to any relief under Article 227 as she has failed to obtain any orders in the suit instituted by her on 9.5.2013 being S.C.Suit No. 1703 of 2013 in City Civil Court at Dindoshi for specific performance of contract in respect of the suit premises. Mr.Kumar, therefore, submitted that the petition is liable to be dismissed.

38. Mr. Soman substantially adopted the submissions of Mr. Kumar. In addition, he submitted that after expiry of licence period, the petitioner is a rank trespasser. She has no right to claim possession from the respondents. He relied upon the decision in the case of **East India Hotel Ltd Vs. Syndicate Bank, 1992 (supp) 2 SCC 29.** He further submitted that this Court cannot order restitution/restoration. Section 144 of C.P.C.

can be invoked only by authority of the first instance. In support of this proposition, he relied upon the decisions of the Apex Court in :

- (i) ***The State Bank of Saurashtra Vs Chitranjan Rangnath Raja, (1980) 4 SCC 516;***
- (ii) ***Lal Bhagat Singh Vs Sri Kishan Das, AIR 1953SC 136;***
- (iii) ***S.N.Banerjee Vs Kuchwar Lime and Stone Co.Ltd, AIR 1941 Privy Council 128.***

He therefore submitted that no case is made out for invocation of powers under Article 227 of the Constitution of India and Petition is liable to be dismissed.

39. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. As noted earlier, on 17.2.2005, document styled as 'leave and licence agreement' was entered into by and between the first respondent and the petitioner herein. Clause (3) thereof recited that there was no monthly compensation mutually agreed between the parties. Clause (12) thereof provided that the petitioner-licensee shall deposit with the first respondent a sum of Rs. 10,00000/- (Ten lakhs only) as a security deposit, free of interest, which will be returned to the licensee on the expiry of the agreement or on the notice of one month in advance for vacation of the premises and against vacant and peaceful possession of the suit premises after deducting the cost

of damages to the fixtures/fittings and outstanding electricity bills, if any. Clause (17) thereof provided that the licensee agrees to vacate and hand over possession on or before expiry of the agreement. If she fails to vacate and hand over the premises to the licensor on expiry of the agreement, she agreed to pay Rs.500/- as damages per day. Clause (20) thereof provided that in the event of the licensee desiring to vacate the suit premises before the expiry, the licensor shall allow the licensee to vacate after paying the compensation for the month unused and at the same time the licensor shall forthwith refund the deposit of Rs.10,00000/- (Ten Lakhs only). The licensee shall, however, give one month's notice of her intention to vacate the premises earlier.

40. On 22.10.2010, respondent no.1 instituted the proceedings under section 24 of the Act before the Competent Authority. On 9.12.2010, the petitioner filed application for leave to defend the proceedings as contemplated by Section 43(4)(a) of the Act. The petitioner came with the case that in the year 2005 the suit premises was not standing in the name of respondent no.1. There was a litigation between the financier of the builder on one hand and the builder on the other. Builder is husband of the first respondent. Respondent no.1 agreed to sell the suit premises to the petitioner for a total consideration of Rs.95 lakhs. The

petitioner paid Rs. 60 lakhs by cheques to the first respondent and to that effect there are entries in Bank Pass books of different Banks which indicate that cheques were encashed by the first respondent. The petitioner also came with the case that she had paid entire consideration of Rs. 95 lakhs to the first respondent. By order dated 12.8.2011, the Competent Authority granted leave to defend. The Competent Authority observed that clauses (3) and (20) of the Leave and Licence Agreement are contradictory to each other. In order to gather the exact intention of the parties at the time of agreement, the recording of evidence is necessary. There are triable issues of law and facts involved in the matter and accordingly it is just and proper to grant leave to defend the application. It is not in dispute that respondent no.1 has not challenged the order granting leave to defend.

41. The petitioner thereafter filed Written Statement on 19.10.2011. In the petition, the petitioner has produced letters issued by (1) Union Bank of India, (2) ICICI Bank and (3) Development Credit Bank Limited confirming issuance of cheques from the accounts of the petitioner in favour of respondent no.1 and Rozina Tharani. Prima facie, it is evident from the record that the petitioner has paid substantial amount to the first respondent. If at all, really there was transaction of leave and

licence between the petitioner and the first respondent, respondent no.1 has not explained as to why such a huge amount was paid by the petitioner to her. It is in that context clauses of the Leave and Licence Agreement assume importance. Clause (3) provided that there is no monthly compensation mutually agreed by licensor and licensee. Clause (12) recorded that the petitioner shall deposit with respondent no.1 a sum of Rs. 10,00,000/- (Ten lakhs only) as a security deposit free of interest which will be returned to the licensee on the expiry of the leave and licence agreement. In other words, prima facie, there was no monthly compensation payable by the petitioner and the security deposit was also liable for refund. The Competent Authority granted leave to defend on 12.8.2011 on the ground that triable issues of law and facts are involved in the matter and it is necessary to record evidence of the parties for bringing on record exact intention of the parties at the time of agreement.

42. It has also come on record that on 21.7.2012 the Competent Authority framed the issues and adjourned the matter for evidence of the first respondent to 31.7.2012. Respondent no.1 was expected to lead evidence. However, instead of leading evidence, respondent no.1 filed application on 31.7.2012, that is to say, nearly after 1.1/2 years from filing of the application,

under section 24 of the Act on 22.10.2010 for direction to the petitioner to pay a sum of Rs. 24,35,000/- and pending the hearing and final disposal of that application, to pay a sum of Rs. 85,000/- per month from 1.9.2012 onwards. On 21.8.2012, the petitioner filed reply resisting that application. In fact, Roznama dated 21.8.2012 records absence of respondent no.1 and her Advocate. On 6.9.2012 respondent no.1 filed affidavit in rejoinder and also written argument in support of her application for depositing arrears. Perusal of the Roznama dated 6.9.2012 shows that the matter was adjourned for reply of the petitioner herein to 25.9.2012. On 25.9.2012 the petitioner filed sur-rejoinder and the matter was adjourned for argument to 6.10.2012 at 12.30 pm. Roznama of 6.10.2012 recorded that respondent no.1 was present with her Advocate. The petitioner was present. Advocate for the petitioner was absent. The Competent Authority observed that the petitioner herein is not ready for argument though was given sufficient time for argument and the matter was kept for orders. In my opinion, this finding is also contrary to record. 6.10.2012 was the first date of hearing after completion of the pleadings. The Competent Authority was, therefore, not justified in holding that though petitioner was given sufficient time for argument, she was not ready. On the same day, the Competent Authority passed order on the application for directing the petitioner to deposit licence fee. The Competent

Authority directed that the interim application for payment/deposit will be decided along with eviction application. Thus, from 31.7.2012 to 6.10.2012 the matter was pending before the Competent Authority for deciding the interim application filed by the first respondent for payment/deposit by the petitioner herein. In other words, the main application under section 24 of the Act was not for hearing before the Competent Authority. At the costs of repetition, after framing of issues by the Competent Authority on 21.7.2012, the matter was posted on 31.7.2012 for recording evidence of the first respondent. Section 43(4)(b)(c) and (5) of the Act reads thus:

“43 - Special procedure for disposal of applications -

(4)(b) The Competent Authority shall give to the tenant or licensee leave to contest the application if the affidavit filed by the tenant or licensee discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the premises on the ground specified in section 22 or 23 or 24;

(c) Where leave is granted to the tenant or licensee to contest the application, the Competent Authority shall commence the hearing of the application as early as practicable and shall, as far as possible, proceed with the hearing from day to day, and decide the same, as far as may be, within six months of the order granting of such leave to contest the application.

(5) The Competent Authority shall, while holding an inquiry in a proceeding to which this Chapter applies, follow the practice and procedure of a court of small causes, including the recording of evidence.”

43. A conjoint reading of Section 43(4)(c) and sub-section (5)

leaves no room for doubt that after granting leave to defend to the licensee to contest the application, the Competent Authority has to hold an inquiry by following the practice and procedure of Small Causes Court including recording of evidence. In the present case, no such procedure was followed by the Competent Authority. On 6.10.2012 the Competent Authority closed the main proceedings for orders and on 20.10.2012 the Competent Authority allowed the application made by the first respondent. In my opinion, the Competent Authority had abdicated duty conferred upon it under section 43(4)(c) and 43(5) of the Act. Perusal of the record does not indicate that respondent no.1 led evidence in support of the application under section 24 and that the petitioner herein declined to either cross examine witness of respondent no.1 or to lead evidence. To put it differently, the Competent Authority allowed the application filed by the first respondent under Section 24 of the Act on the premise that leave to defend is not granted to the petitioner.

44. Perusal of the order passed by the Competent Authority shows that while allowing the application under Section 24, the Competent Authority acted in flagrant disregard of procedure laid down under Section 43(4)(c) and 43(5) of the Act. It also acted in gross violation of the principles of natural justice. The Competent Authority has committed serious errors, which are

manifest and apparent on the face of the proceedings namely the order is based on clear ignorance or disregard of the provisions of law.

45. Aggrieved by the decision of the Competent Authority, the petitioner instituted Revision Application before the Commissioner under section 44 of the Act. Perusal of the Revision Memo shows that the petitioner has specifically raised grounds in support of the procedure adopted by the Competent Authority. It was contended that basically the matter was posted for argument on the interim application made by the first respondent for direction to deposit/payment of arrears of compensation and was not for hearing of main application under section 24 of the Act. The Commissioner, however, did not advert to this aspect which is fundamental for deciding the proceedings under section 24 and which goes to the root of the matter.

46. Mr. Kumar submitted that the Competent Authority and Commissioner are neither Court nor Tribunal, and therefore, Petition under Article 227 of the Constitution of India challenging these orders is not maintainable. In support of this proposition, he relied upon **Radhey Sham** (*supra*) and **Shalini Shyam Shetty** (*supra*).

47. In the case of **Surya Dev Rai** (*supra*), the Apex Court has observed in paragraph 7 thus,

"7. H.W.R. Wade & C.F. Forsyth define certiorari in these words :- "Certiorari is used to bring up into the High Court the decision of some inferior tribunal or authority in order that it may be investigated. If the decision does not pass the test, it is quashed - that is to say, it is declared completely invalid, so that no one need respect it.

The underlying policy is that all inferior courts and authorities have only limited jurisdiction or powers and must be kept within their legal bounds. This is the concern of the Crown, for the sake of orderly administration of justice, but it is a private complaint which sets the Crown in motion."(Administrative Law, Eighth Edition, page 591)."

48. In paragraph 9, it referred to quotation by Lord Chancellor Viscount Simon in *Ryots of Garabandho Vs. Zamindar of Parlakimedi*, AIR 1943 Privy Council 164. In that, it was observed thus,

"... Broadly speaking, it may be said that if the act done by the inferior body is a judicial act, as distinguished from being a ministerial act, certiorari will lie. ..."

49. In paragraph 13, it was observed thus,

"13. In *Nagendra Nath Bora & Anr. Vs. Commissioner of Hills Division and Appeals, Assam & Ors.*, (1958) SCR 1240, the parameters for the exercise of jurisdiction, calling upon the issuance of writ of certiorari where so set out by the Constitution Bench : (SIR pp.412-13, paras 26-27)

"The Common law writ, now called the order of certiorari, which has also been adopted by our Constitution, is not meant to take the place of an appeal where the Statute does not confer a right of appeal. Its purpose is only to determine, on an examination of the record, whether the inferior tribunal has exceeded its

jurisdiction or has not proceeded in accordance with the essential requirements of the law which it was meant to administer. ...”

50. In paragraph 20, the Apex Court referred to decision in *Satyanarayan Laxminarayan Hegde Vs. Mallikarjun Bhavanappa Tirumale*, AIR 1960 SC 137 wherein it was held that the alleged error should be self-evident. An error which needs to be established by lengthy and complicated arguments or an error in a long-drawn process of reasoning on points where there may conceivably be two opinions cannot be called a patent error. In a writ of certiorari the High Court may quash the proceedings of the tribunal, authority or court but may not substitute its own findings or directions in lieu of one given in the proceedings forming the subject-matter of certiorari.

51. In paragraph 22, the Apex Court dealt with supervisory jurisdiction of the High Court under Article 227 of the Constitution of India. It was observed that,

“... It is well-settled that the power of superintendence so conferred on the High Court is administrative as well as judicial, and is capable of being invoked at the instance of any person aggrieved or may even be exercised suo motu. The paramount consideration behind vesting such wide power of superintendence in the High Court is paving the path of justice and removing any obstacles therein. The power under Article 227 is wider than the one conferred on the High Court by Article 226 in the sense that the power of superintendence is not subject to those technicalities of procedure or traditional fetters which are to be found in certiorari jurisdiction.”

52. In paragraph 24, it was observed that the power under

Article 227 may be exercised in the case occasioning grave injustice or failure of justice.

53. In paragraph 38, the Apex Court ultimately summed up the conclusions. In clause (7), the Apex Court observed that the power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any any suit or proceedings. The judicial conscience dictates to set aside the impugned orders lest a gross failure of justice or grave justice would occasion. In view thereof, I do not find any merit in the submission of Mr. Kumar that Petition under Article 227 of the Constitution of India challenging the impugned orders is not maintainable.

54. Mr. Kumar relied upon the decision of **Shalini Shyam Shetty** (*supra*) to contend that this Court will decline to examine correctness of the orders passed by the authorities below which arise out of purely property disputes between private individuals, namely, licensor and licensee. He submitted that petitioner has admitted existence and execution of leave and licence agreement dated 17.02.2005 which came to an end by efflux of

time by June 2006. I do not find any merit in this submission. In **Radhey Shyam** (*supra*), the Apex Court has reproduced paragraph 65 of **Shalini Shyam Shetty** (*supra*) which reads thus,

“65. We would like to make it clear that in view of the law referred to above in cases of property rights and in disputes between private individuals writ court should not interfere **unless there is any infraction of statute** or it can be shown that a private individual is acting in collusion with a statutory authority.

(emphasis supplied)”

55. For the reasons already recorded, I do not find any merit in this submission. Mr. Kumar relied upon the decision of **S. P. Chengalvaraya** (*supra*) and of Delhi High Court in **D.T.T.D.C.** (*supra*). He submitted that petitioner has not paid amount since June 2010. Petitioner has consistently flouted the orders of the Commissioner as also orders of this Court. He, therefore, submitted that petitioner is not entitled to any equitable relief in exercise of powers under Article 227 of the Constitution of India. I will deal with this aspect at a later stage.

56. Mr. Kumar submitted that petitioner has not challenged the order of the Competent Authority. The said submission is stated to be rejected. Prayer clause (c) reads thus,

“c) That after perusal of record and proceedings in respect of impugned Judgment and Order dated 14th August, 2014 passed in Revision Application No.624 of 2012 thereby confirming impugned Judgment and Order dated 20th October, 2012, passed by competent authority in

Application No.60 of 2010, and after examining the legality and validity of the said orders, the same may kindly be quashed and set aside;"

57. Mr. Kumar submitted that Section 43(4)(a) lays down that the tenant on whom the summons is duly served in the ordinary or by registered post in the manner laid down in sub-section (3) shall not contest the prayer for eviction from the premises, unless within thirty days of the service of summons on him, he files an affidavit stating grounds on which he seeks to contest the application for eviction and obtains leave from the Competent Authority and in default of his appearance in pursuance of the summons or his obtaining such leave, the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant or the licensee as the case may be, and the applicant shall be entitled to an order for eviction on the aforesaid grounds. He submitted that in the present case, the Competent Authority granted leave to defend on 12.8.2011. On 6.10.2012 the Competent Authority recorded that the petitioner herein is not ready for argument, though was given sufficient time. In view of Section 43(4)(a) as there is default in the appearance of the petitioner after obtaining leave to defend, the statement made by the first respondent in the application for eviction is deemed to be admitted by the petitioner and the first respondent is entitled to an order for

eviction. He, therefore, submitted that the authorities below were fully justified in allowing the application under Section 24 of the Act. He relied upon decision in **AMI Merchandising Pvt. Ltd.** (*supra*). I do not find any merit in this submission. Section 43(4) (a) empowers the Competent Authority to pass order of eviction in the event of two contingencies namely, in the event of - (i) default of the appearance of tenant or licensee, as the case may be and (ii) failure of the tenant or a licensee, as the case may be, in obtaining leave to defend. Admittedly, in the present case, the Competent Authority granted leave to defend to the petitioner on 12.8.2011. The reliance placed by Mr. Kumar on **AMI Merchandising Pvt. Ltd.** (*supra*) does not advance the case of the respondent No.1.

58. Finally, Mr. Kumar submitted that no prayer is made by the petitioner for remanding the matter to the Commissioner. He submitted that petitioner has failed to obtain any orders in the Suit instituted by her for specific performance of contract. For the reasons already recorded, I do not find any merit in this submission.

59. That brings me to the submissions advanced by Mr. Soman. Mr. Soman submitted that the petitioner is a rank trespasser. He relied upon the decision of the Apex Court in the case of **East India Hotels Limited** (*supra*). In that case, respondent

Syndicate Bank executed a leave and licence agreement dated 27.02.1974 in favour of appellant Company in respect of 15,000 sq. ft. on the mezzanine to the ground floor of the hotel Oberoi Towers for the period of 12 years . The period of 12 years came to an end in December 1986. The request made by the respondent for renewal of licence was specifically turned down by the appellant. Appellant served a legal notice dated 22.1.1990 calling upon the respondent to handover vacant possession. On 12.4.1990, a fire broke out in Oberoi Towers and as a result thereof, respondent had to vacate the premises. On 29.8.1990, respondent instituted on the Original Side of this Court under Section 6 of the Specific Relief Act, 1963. The learned Single Judge decreed the Suit. Aggrieved by the decision, appellant approached the Apex Court. Hon'ble Mr. Justice N. M. Kasliwal allowed the Appeal. It was observed that respondent Bank did not dispute that the agreement between the parties was a leave and licence agreement. In the plaint also respondent came with the definite case of license and not of lease. Licence also expired by efflux of time in December 1986. Appellant never took law in its own hands much less used any force in order to dispossess the bank from the premises and it is in that context, in paragraph 12, it was observed that the possession of such licensee is no better than a trespasser and if a true owner comes into possession of the premises without using any force or on account

of fire or other act of vis major, it would not be in the interest of justice to grant a decree for possession in favour of such licensee under Section 6 of the Act.

60. Hon'ble Mr. Justice K. Ramaswamy referred to definition of licence in Section 52 of the Indian Easements Act, 1882. In paragraph 28, it was observed that a licensee is a person, who is neither a servant nor a "rank trespasser", but had come into possession with an authority. A rank trespasser is one who does not stand in any contractual relationship with the owner of the premises, A trespasser is also one who lawfully enters into but unlawfully remains in possession of the property without the consent or acquiescence of the owner. It was further held that respondent, after expiry of the licence or its termination, was in settled possession and its dispossession was otherwise than in due course of law. The learned Judge, therefore, dismissed the Appeal. In view of the conflicting judgments, the matter was placed before the Hon'ble the Chief Justice for constituting the larger Bench for resolving the conflict.

61. In the case of ***Rame Gowda Vs. M. Varadappa Naidu***, (2004) 1 SCC 769, after considering various decisions on this subject, in paragraph 8, it was observed thus,

"8. It is thus clear that so far as the Indian law is

concerned the person in peaceful possession is entitled to retain his possession and in order to protect such possession he may even use reasonable force to keep out a trespasser. A rightful owner who has been wrongfully dispossessed of land may retake possession if he can do so peacefully and without the use of unreasonable force. If the trespasser is in settled possession of the property belonging to the rightful owner, the rightful owner shall have to take recourse to law; he cannot take the law in his own hands and evict the trespasser or interfere with his possession. The law will come to the aid of a person in peaceful and settled possession by injunctioning even a rightful owner from using force or taking law in his own hands, and also by restoring him in possession even from the rightful owner (of course subject to the law of limitation), if the latter has dispossessed the prior possessor by use of force. In the absence of proof of better title, possession or prior peaceful settled possession is itself evidence of title. Law presumes the possession to go with the title unless rebutted. The owner of any property may prevent even by using reasonable force a trespasser from an attempted trespass, when it is in the process of being committed, or is of a flimsy character, or recurring, intermittent, stray or casual in nature, or has just been committed, while the rightful owner did not have enough time to have recourse to law. In the last of the cases, the possession of the trespasser, just entered into would not be called as one acquiesced to by the true owner."

62. The said decision is rendered by three learned Judges of the Apex Court. In view of the decision of **Rame Gowda** (*supra*) as also having regard to the fact that the Competent Authority had granted leave to defend to the petitioner as triable issues of law and facts are involved in the matter and that petitioner was in settled possession of the suit premises, the decision in **East India Hotels Limited** (*supra*) does not advance the case of the respondent No.4.

63. Mr. Soman submitted that this Court cannot order

restitution / restoration. Section 144 of C.P.C. can be invoked only by authority of the first instance. In support of this proposition, he relied upon the decisions of the Apex Court in - (i) **State Bank of Saurashtra** (*supra*), (ii) **Lal Bhagat Singh** (*supra*) and (iii) **S.N.Banerjee** (*supra*). In the case of **Prakash Jain** (*supra*), the Apex Court has considered the scheme of Chapter VIII of the Act in paragraphs 10, 12 and 13. In paragraph 12, the Apex Court held that competent authority is not a Court. In paragraph 13, it was held that the competent authority is a statutory authority created for a definite purpose and to exercise powers in a quasi-judicial manner. The powers are circumscribed by the very statutory provisions, which are conferred upon it. Those powers could be exercised in the manner provided thereof subject to such conditions and limitation stipulated in Chapter VIII of the Act. In paragraph 8, the Apex Court referred to the decision of the learned Single Judge of Delhi High Court in **Gurditta Mal Vs. Bal Swarup, AIR 1980 Delhi 216**. In that case, the High Court chose to infer conferment of power under Rule 23 of the Delhi Rent Control Rules, 1959, though such power was not conferred under the statute, by relying upon Section 151 of C.P.C. The Apex Court observed that this could not have been done, having regard to the very nature and content of power under Section 151 and its inapplicability to Authorities other than ordinary Courts.

64. Section 151 of C.P.C. reads thus,

“151. Saving of inherent powers of Court.- Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice, or to prevent abuse of the process of the Court.”

65. Perusal of Section 151, extracted hereinabove, clearly shows that the said provision is applicable to the Court and not to a statutory authority like the competent authority created under Chapter VIII of the Act. In other words, Section 151 of C.P.C. cannot be invoked by a party to the proceedings before the competent authority. In view thereof as also in view of the decision of Prakash Jain (*supra*), Section 144 cannot be invoked before the Competent Authority. Hence, the reliance placed by Mr. Soman on the decisions in - (i) **State Bank of Saurashtra** (*supra*), (ii) **Lal Bhagat Singh** (*supra*) and (iii) **S.N.Banerjee** (*supra*) does not advance his case.

66. Respondent No.4 is admittedly inducted as a licensee by respondent No.1. In other words, respondent No.4 is claiming through respondent No.1. Even otherwise, being a licensee, respondent No.4 cannot claim any interest in the suit premises. In the case of **Gurujoginder Singh** (*supra*), the Apex Court has considered who could be called a bonafide transferee. The Apex Court observed in paragraph 3 that the status of a bonafide purchaser in an auction sale in execution of a decree to which he

was not a party stands on a distinct and different footing from that of a person who is inducted as a tenant by a decree-holder/landlord. In the present case also, respondent No.4 is inducted by respondent No.1 as a licensee. Respondent No.4 is claiming through respondent No.1. Respondent No.1, being a licensee, has no interest in the suit premises. Respondent No.1, who inducted respondent No.4, is bound to restore to the petitioner what she has gained by the impugned orders. In view of the decision in **Gurujoginder Singh** (*supra*), respondent No.4 cannot claim to be a bonafide transferee and is bound by any order that may be passed against the respondent No.1.

67. The moot question is whether in the facts of the present case, while exercising power under Article 227 of the Constitution of India, this Court should order restoration. I have considered the decision of the Apex Court in the case of **Surya Dev Rai** (*supra*). In paragraph 22 of that case, the Apex Court has observed that the power of superintendence so conferred on the High Court is administrative as well as judicial, and is capable of being invoked at the instance of any person aggrieved **or may even be exercised suo motu. The paramount consideration behind vesting such wide power of superintendence in the High Court is paving the path of justice and removing any obstacles therein. The power**

under Article 227 is wider than the one conferred on the High Court by Article 226 in the sense that the power of superintendence is not subject to those technicalities of procedure or traditional fetters which are to be found in certiorari jurisdiction. *(emphasis supplied)*

68. Applying the tests laid down by the Apex Court in the case of **Surya Dev Rai** (*supra*), I find that as the competent authority has committed fundamental error in allowing the proceedings under Section 24 of the Act and the said order was upheld by the Commissioner, respondent No.1 can execute the patently illegal orders. It is, therefore, eminently fit to order restoration albeit subject to imposing conditions on the petitioner.

69. Mr. Godbole has tendered statement of arrears/payment of interim deposit for the period from June, 2010 to August, 2016 which comes to Rs. 40,15,000/-. He has also tendered statement of arrears / payment of society charges to the tune of Rs.1,76,400/-. Mr. Godbole, upon taking instructions, states that petitioner will deposit Rs.40,15,000/- before the Competent Authority on or before 25.01.2017. Petitioner will continue to deposit Rs.55,000/- p.m. from November 2016 on or before 10th day of each succeeding month towards interim deposit before the competent authority. He further states that petitioner will pay

arrears of society charges to the tune of Rs.1,76,400/- to the society on or before 25.01.2017 under protest and will continue to pay monthly charges from November 2016 upon receipt of society maintenance bill. Statements made by Mr. Godbole, on instructions, are accepted. In view thereof, Civil Revision Application is disposed of in the following terms:

a. Order dated 14.8.2014 passed by the Addl. Commissioner, Konkan Division, Mumbai in Revision Application No.624 of 2012 as also the order dated 20.10.2012 passed by the Competent Authority, Konkan Division, Mumbai in Application No.60 of 2010 are set aside and application No.60 of 2010 is restored to the file of the Competent Authority. Competent Authority will bear in mind that petitioner was granted leave to defend on 12.08.2011 and will follow the procedure laid down under Section 43(4)(c) and 43(5) and pass appropriate order on the basis of evidence on record and in accordance with law and uninfluenced by the observations made / findings recorded herein. All contentions of the parties on merits are expressly kept open;

b. Subject to the petitioner depositing arrears of interim deposit to the tune of Rs.40,15,000/- as also society charges to the tune of Rs.1,76,400/- on or before 25.01.2017 with the Competent Authority, respondents No.1 and 4 shall handover

possession of the suit premises to the petitioner. Petitioner will continue to deposit monthly charges @ Rs.55,000/- from November 2016 on or before 10th day of each succeeding month towards interim deposit before the Competent Authority. Petitioner will also pay monthly charges of the Society from of the Society from November 2016 upon receipt of the society maintenance bill. The deposits and payment made by the petitioner are without prejudice to her rights and contentions. It is made clear that in case the petitioner does not comply this direction respondents No.1 and 4 will not be bound to handover possession of the suit premises to the petitioner;

c. Rule is made absolute in the aforesaid terms with no order as to costs.

70. At this stage, Mr. Rakesh Kumar for respondent no.1 and Ms Monika Rajput for respondent no.4 orally apply for stay of eight weeks from today to the direction to hand over possession to the petitioner. They assure that respondents No.1 and 4 will not seek further extension. Mr. Kumar states that respondent no1. will neither create third party interest nor part with possession. Ms Monika Rajput for respondent no.4 also states that respondent no.4 will not part with possession.

71. In view thereof, the direction issued against respondent

no.1 and 4 to hand over possession of the suit premises to the petitioner is stayed for a period of eight weeks from today subject to respondent no.1 neither creating third party interest nor parting with possession. Respondent no.4 also will not part with possession. In case the respondent No.1 and / or 4 is / are unable to obtain suitable orders from the higher Court within 8 weeks from today, they will handover vacant and peaceful possession of the suit premises to the petitioner.

72. By way of abundant caution, it is clarified that this Court has not stayed direction issued to the petitioner for depositing arrears of interim compensation to the tune of Rs.40,15,000 as also payment of society charges to the tune of Rs.1,76,400/- which are to be deposited on or before 25.1.2017. This Court has also not stayed direction to the petitioner to deposit monthly charges at the rate of Rs.55,000/- per month from November,2016 as also payment of monthly society charges to the society. Order accordingly.

(R. G. KETKAR, J.)