

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

**CIVIL REVISION APPLICATION NO. 554 OF 2016
WITH
CIVIL REVISION APPLICATION NO.555 OF 2016**

Mr. Brijendra Tiwari

..Applicant

Vs

Mr. Penumarti Sreenivas

.. Respondent

Mr. Sandeep S. Jinsiwale, Advocate for Applicant.

Mr. Uday Warunjikar, Advocate for Respondent.

CORAM : R.G.KETKAR,J.

DATE : 03/10/2016

PC:

1. Heard Mr.Sandeep Jinsiwale, learned counsel for the applicant and Mr.Uday Warunjikar, learned counsel for the respondent at length.

2. By these Applications under Section 115 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.'), the applicant has challenged the Judgments and orders dated 27.7.2016 passed by Competent Authority under the Maharashtra Rent Control Act, 1999, (for short, 'Act') in Eviction Petitions No.21 of 2012 and 22 of 2012. By these orders, the Competent Authority rejected the applications made by the applicant under Order VII, Rule 11 read with Section 151 of C.P.C.

3. The applicant filed the applications for rejecting the

proceedings instituted by the respondent under section 24 of the Act on the grounds that the proceedings are not maintainable as the premises in question were not given on licence for residential purpose; that in the entire eviction proceedings the respondent has not pleaded when the cause of action accrued so as to determine whether it is barred by limitation; that the respondent has not affixed requisite court fee on the eviction proceedings.

4. In support of these Applications, Mr. Jinsiwale reiterated the submissions advanced before the Competent Authority. He submitted that the respondent has not pleaded when the cause of action accrued for filing eviction proceedings under section 24 of the Act. The premises in question were given on licence for commercial purpose and not for residential purpose and, therefore, the Competent Authority has no jurisdiction to entertain and try the proceedings.

5. On the other hand, Mr. Warunjikar supported the impugned orders. He submitted that for identical relief the petitioner has filed applications under section 9A which were rejected on 16.3.2015. The applicant herein has not challenged the said order. He submitted that the premises in question were given on licence for a period of 22 months from 5.12.2011 to 4.10.2013. The respondent terminated the licence by issuing notice on 3.4.2012 w.e.f. 3.6.2012. The eviction proceedings are

instituted in the year 2012 and, therefore, are not barred by limitation. That apart, the requisite facts constituting cause of action have been set out in the eviction proceedings and the Competent Authority has rightly rejected the applications filed under Order VII, Rule 11 read with Section 151 of C.P.C. He submitted that the leave and licence agreement is a registered instrument and specifically records that the premises in question are given on licence for residential purpose.

6. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. Perusal of leave and licence agreement, shows that it is a registered instrument and prima facie the premises in question are given for residential use. It is also not in dispute that the premises in question were given on licence for a period of 22 months commencing from 5.12.2011 and ending on 4.10.2013. The respondent has terminated the licence by issuing notice dated 3.4.2012 with effect from 3.6.2012 and thereafter has filed eviction proceedings. In view thereof, it cannot be said that the respondent has not set out the facts constituting cause of action. Equally, it cannot be said that the eviction proceedings are not maintainable as the premises are not given for residential purpose. That apart, the applicant had filed applications under section 9A of C.P.C. which were also rejected on 16.3.2015 which

order was not challenged. The Competent Authority, therefore, rightly rejected the applications. Hence, no case is made out for invocation of powers under section 115 of C.P.C. Applications fail and the same are dismissed.

(R.G.KETKAR, J.)