

Sequeira

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

WRIT PETITION NO. 12596 OF 2016

Maxim Edward Mathias

.. Petitioner

Vs

The State of Maharashtra & ors.

.. Respondents

Mr.Devbrat Singh i/b R.R.Pandey, for the Petitioner.

Ms.K.R.Kulkarni- Assistant Government Pleader, for Respondent Nos.1 to 3.

Mr.P.D.Jain a/w K.R.Shah i/b P.D.Jain & Co., for Respondent No.4.

***CORAM : N.M.Jamdar, J.
Wednesday, 21 December 2016.***

Oral Order :

By this petition, the Petitioner has challenged the concurrent orders passed by the Competent Authority, Konkan division, Mumbai and the Additional Commissioner Mumbai granting the application filed by the Respondent-licensor under section 24 of the Maharashtra Rent Control Act 1999.

2. The premises under question are a residential flat situated in a Cooperative Housing Society at Dahisar, Mumbai. An application under section 24 of the Act of 1999 was filed by Respondent-licensor seeking eviction of the Petitioners from the suit flat on the ground that inspite of the leave and license agreement dated 8 January 2013

having been expired the Petitioner has not handed over the possession of the flat. The Petitioner appeared pursuant to summons and sought leave to defend which was refused by the Competent authority by an order dated 26 February 2016 and the Case No.34 of 2015 was allowed by order dated 5 March 2016. These orders have been confirmed by the Additional Commissioner by order dated 13 October 2016.

3. The learned counsel for the Petitioner submitted that though it is correct that under sale deed the amount has been received by the Petitioner, these deeds were in fact mortgage deeds pursuant to a financial transaction between the parties. He submitted that various aspects such as the liability to pay maintenance charges, the absence of share certificate with the Respondent, the mentioning of the amount of rupees thirty lakhs being paid before the execution of the deed were in fact was received after the execution of the deed, clearly goes to show that the sale deeds were in fact not to be acted upon as such and they were the mortgage deeds and for that purpose the Petitioner and his wife have already filed Civil Suit bearing No.1438 of 2015 and Civil Suit No.1437 of 2015 at City Civil Court, Dindoshi, Mumbai for a declaration that the sale deeds were declared as null and void, and an injunction has also been sought in the said suits. The learned counsel for Petitioners submitted that in view of these arguable questions that have been raised leave to defend on conditions should have been granted. The learned counsel for

Respondents on the other hand submitted that having invoked jurisdiction of competent court i.e. by filing civil suit the Petitioners have not obtained any orders and the Competent authority has rightly gone by registered leave and license agreement.

4. The proceedings before the Competent authority under section 24 of the Act are governed by summary procedure. Before the Competent authority the leave and license agreements which are duly registered were placed. The Competent authority accordingly gave effect to leave and license agreement. If it was the case of Petitioners that the leave and license agreements were executed pursuant to a sale deed which itself were null and void and were in fact mortgage deeds, Petitioners could have obtained necessary orders from the competent court. The Competent authority has noted that when the leave and license was terminated and notice was issued, the Petitioner avoided to give any reply there and after the receipt of the notice, the suit has been filed in the year 2015 challenging the deeds of the year 2013. The contention of the learned counsel for Respondents that this defence is an after-thought, after having received the entire consideration, prima facie cannot be said as impossible. Considering the narrow jurisdiction vested in the authorities, in absence of pronouncement of any competent court or any interim order there was no error committed by both the courts in going by a valid leave and license agreement between the parties. In the circumstances no case is made out. Writ petition is accordingly rejected.

5. At this stage, learned counsel for Petitioners seeks continuation of the ad-interim order for a period of six weeks. I am inclined to grant four weeks time however since it will take some time to get copy of the order, the ad-interim order is continued for a period of six weeks from today.

(N.M.Jamdar, J.)