

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Writ Petition NO. 11019 OF 2014

Mrs. Helen Francis Divyanandan
And Anr

...Petitioners

Versus

Gloria Agnel Mascarnhans

...Respondent

....

Mr.Pramod J. Pawar, Advocate for the Petitioners.

Ms. Jyoti Chavan, Advocate for the Respondent.

....

CORAM : R. G. KETKAR, J.

DATE : 27th July, 2016

P.C.

1. Heard Mr.P.J. Pawar, learned Counsel for the petitioners and Ms.Jyoti Chavan, learned Counsel for the respondent, at length.

2. Rule. Ms. Chavan waives service. At the request and by consent of the parties as also in view of order dated 7.7.2016, 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, 1950, the petitioners have challenged the judgment and order dated 5.11.2014 passed by the Additional Commissioner,

Konkan Division, Mumbai (for short, 'Commissioner') in Revision Application No.332/2013. By that order, the Commissioner partly allowed the Revision Application filed by the respondent and quashed and set aside the judgment and order dated 27.6.2013 passed by the Competent Authority, Konkan Division (for short, 'Competent Authority') in Case No.3/2013 and remitted the matter to the Competent Authority for fresh disposal after allowing both the parties to adduce oral and documentary evidence and then to pass final order as per laws.

4. In support of this petition, Mr. Pawar strenuously contended that on the basis of the leave and licence agreement dated 11.10.2004, the respondent was inducted as a licensee in room at Patel Wadi, Juhu, A.B. Nair Road, Vile Parle (W), Mumbai – 400 099. The respondent gave deposit of Rs.25,000/- and agreed to pay compensation of Rs.2000/- per month. The licence was from 30.10.2004 to 29.9.2005. After expiry of that period as the respondent did not vacate the suit premises, the petitioner instituted the proceedings under Section 24 of the Maharashtra Rent Control Act, 1999 (for short, 'Act'). The respondent filed application for leave to defend. As there was

delay in filing the application for leave to defend, the Competent Authority rejected the application. By order dated 27.6.2013 the Competent Authority allowed the application under Section 24 and directed the respondent to hand over vacant and peaceful possession of the suit premises. Aggrieved by that decision, the respondent preferred Revision under Section 44 of the Act. By the impugned order, the Commissioner allowed that application. Mr. Pawar submitted that in view of Section 43(4)(a) of the Act, once the leave to defend is rejected, the statement made by the landlord in the application for eviction are deemed to be admitted by the licensee and the applicant is entitled to an order of eviction on the ground stated in the application. He submitted that by the impugned order, the Commissioner granted permission to the parties to adduce evidence when the application for leave to defend was rejected.

5. He further submitted that the Commissioner committed serious error in holding that the petitioners have falsely described the suit premises situate at Leo Creado Chawl and that the respondent was not given opportunity at the time of hearing of main application. He further submitted that the

respondent claims ownership over the suit premises. In paragraph-7, the Competent Authority specifically recorded a finding that the respondent has not placed on record any document, which proves the ownership right over the suit premises. He, therefore, submitted that the impugned order deserves to be quashed and set aside.

6. On the other hand, Ms. Chavan supported the impugned order. She submitted that the document dated 11.10.2004 cannot be styled as 'leave and licence agreement'. That apart, said document does not bear the signature of the respondent. She further submitted that the suit premises belongs to Mr.Patel and the respondent is owner of the suit premises. She has taken me through the application for leave to defend and in particular paragraph-6 wherein the respondent contended that she is the owner in respect of Patelwadi, A.B. Nair Road, Gauthan, Road No.2, Juhu Church, Vile Parle (West), Mumbai – 400 049. She submitted that as the respondent is the owner of the suit premises, the application filed under Section 24 of the Act before the Competent Authority itself is not maintainable.

7. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. Perusal of document dated 11.10.2004 shows that the respondent has given deposit of Rs.25,000/- and agreed to pay compensation @ Rs.2000/- per month for staying in the suit premises for a period of eleven months from 30.10.2004 to 29.9.2005. Explanation (b) to Section 24(3) of the Act lays down that an agreement of licence in writing shall be the conclusive evidence of the facts stated therein.

8. Ms. Chavan submitted that the document dated 11.10.2004 cannot be styled as "leave and licence agreement". Said document does not bear signature of the respondent. In other words, the signature of the respondent is forged.

9. Section 43 of the Act lays down special procedure for disposal of applications. Sub-section (4)(a) of Section 43 provides that the tenant or licensee on whom the summons is duly served in the ordinary way 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 as aforesaid, 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 ground aforesaid. Clause (b) of sub-section (4) of Section 43 lays down that 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 of the Act. Clause (c) of sub-section (4) of Section 43 of the Act lays down that where leave is granted 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 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. Sub-section (5) of Section 43 lays down that the Competent Authority shall, while holding an

inquiry in a proceeding to which Chapter-VIII applies, follow the practice and procedure of a Court of Small Causes, including the recording of evidence. If the submission of Ms. Chavan is to be accepted, it will enlarge the jurisdiction as also the scope of proceedings under Section 24 of the Act before the Competent Authority. In view thereof, I do not find any merit in the submission of Ms. Chavan.

10. In the case of **Surendra B. Agarwal and another v. AML Merchandising Pvt. Ltd., 2010(1) Mh.L.J. 223**, the learned Single Judge has held that once the application under Section 24 of the Act is filed by the licensor, the Competent Authority has to decide the application in accordance with law. The Competent Authority is not really concerned with the title of the licensor. All that is required to be examined is whether the applicant is a licensor and whether the opponent is a licensee and whether there was a leave and licence agreement for residential use of the suit property. In case where the licensee is claiming some other rights in relation to the premises in dispute, adjudication of said rights cannot be made by the Competent Authority. In paragraphs-10 and 11, it is observed thus :

“10. Thus, the special provision has been made under the said Act for evicting the licensees of premises given on licence for residence. A special procedure laid down under Chapter VIII governs the application made under Section 24 of the said Act. The said Act contemplates a summary disposal of the applications. By the very nature of the proceedings as reflected from the aforesaid statutory provisions, the jurisdiction of Competent Authority is very limited. It can decide a dispute between a landlord (lincesor) and the licensee. It is obvious that considering the summary nature of the proceedings, issue of title to the disputed premises can never be decided in such proceedings. The Sub-section (1) of Section 24 starts with non-obstante clause. Moreover Section 39 of the said Act gives overriding effect to the provisions of Chapter VIII. Therefore, pendency of a suit governed by Section 33 of the said Act or a suit on title cannot prevent the Competent Authority from deciding an application for eviction. There is no statutory power vesting the Competent Authority to stay the proceedings of the application under Section 24 of the said Act on the ground of pendency of a civil suit relating to the property.

11. All that is required to be considered by the Competent Authority is whether the landlord has given the premises on licence for residence and whether on expiry of period of licence the licensee has not delivered the possession of the premises subject matter of licence. Sub-section (3) of Section 24 of the said Act specifically prevents the Competent Authority from considering a claim of any stranger. The intention of legislature of making an Agreement of Licence in writing as a conclusive evidence of the facts stated therein cannot be altogether ignored.”

11. In view thereof, I do not find any merit in the submission of Ms.Chavan that the respondent is the owner. That apart in paragraph-7, the Competent Authority recorded a categorical finding that the respondent failed to file any document to establish ownership rights over the suit premises. Even in the present proceedings in this Court, no document of title is produced. In view thereof, it cannot be said that the respondent is the owner of the suit premises.

12. As noted earlier, the application for leave to defend was rejected on the ground of delay. In view of the decision of Apex Court in the case of ***Prakash Jain v. Ms. Marie Fernandes***, ***AIR 2003 SC 4591***, the Competent Authority has no power to condone the delay in filing application for leave to defend as it is not a Court. In view thereof, once the application for leave to defend filed by the respondent was rejected, the statements made by the petitioners in the application under Section 24 of the Act are deemed to have been admitted by the tenant or the licensee, as the case may be, and the order of eviction must follow. The Commissioner, therefore, was not justified in allowing the revision application and also permitting the parties

to lead evidence once the application for leave to defend is rejected. In view thereof, the impugned order cannot be sustained and is set aside and the order of Competent Authority is restored. Rule is made absolute in aforesaid terms with no order as to costs. Ms. Chavan states that the respondent has filed Criminal proceedings in the Court of Metropolitan Magistrate. Said proceedings shall be decided uninfluenced by the observations made in this order. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)