

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION St. NO.33644 OF 2015**

Vijesh Chawla)
Flat No.G/158, Oshiwara Tarapore)
Garden CHS Ltd., New Linking)
Road, Andheri West Mumbai-58) ..Petitioner

Vs.

Jacob Verghese)
residing at Plot No.59,)
Chndragiri Colony, Trimulgherry,)
Secunderabad 500 015) ..Respondent

Mr. P. S. Dani Senior Advocate a/w Mr. C. J. Doveson a/w Mr. Mahendra Jawale i/b Rex Legalis for the Petitioner

Mr. V. Narayanan for the Respondent

**CORAM : R. M. SAVANT, J.
DATE : 3rd MARCH, 2016**

ORAL JUDGMENT

1 Rule. Having regard to the nature of the challenge raised, made returnable forthwith and heard.

2 The Writ Jurisdiction of this Court is invoked against the order dated 26-11-2015 passed by the Additional Commissioner, Konkan Division, by

which order, the Revision Application filed by the Petitioner came to be rejected and resultantly the order dated 4-7-2014 passed by the Competent Authority in Application No.25 of 2013 came to be confirmed.

3 It is not necessary to burden this order with unnecessary details considering the directions to be issued. Suffice it would be to state that the Petitioner herein was the Respondent in Application No.25 of 2013 filed by the Respondent herein under Section 24 of the Maharashtra Rent Control Act, 1999 (for short the said Act) for possession of the suit premises in question. The said application was founded on the fact that there was a Leave and Licence Agreement entered into between the parties on 10-12-1994 for the period commencing 10-12-1994 to 9-11-1995, on the Petitioner i.e. the Respondent to the application refusing to vacate and hand over possession of the premises in question that the Respondent herein filed the said Application No.25 of 2013 for possession of the premises in question which is Flat No.G/158 in Oshiwara Tarapore Garden CHS Ltd., New Linking Road, Andheri (W) Mumbai – 400058. The Petitioner and the Respondent have a defence background in as much as the father of the Petitioner is a defence personnel being Major in the Indian Army, whereas the Respondent herein was also a Non Commissioned Officer in the Indian Army. It seems that the flat was allotted in a scheme which was floated for the defence personnel.

4 On the summons in the said Application No.25 of 2013 being served on the Petitioner herein, the Petitioner filed an application for leave to defence as postulated by Section 43 of the said Act. In the said application for leave to defend the Petitioner inter alia raised various defences, however the sum and substance of the defence appears to be that an Agreement for Sale was executed in favour of the Petitioner in respect of the flat in question and thereafter a Sale Deed has also been executed which is duly stamped. In support of the application for leave to defend, the Petitioner sought to rely upon various documents which were inter alia the Agreement for Sale, letters from Army Headquarters, Sale Deed allegedly executed between the parties on 28-2-1994, the sanction of the authorities exercising powers under the Maharashtra Co-operative Housing Society for membership to the Petitioner, being some of the documents. However, the Petitioner it seems did not produce the originals of the said documents but had filed xerox copies along with the application for leave to defend. The said application for leave to defend was considered by the Competent Authority as required under the provisions of the said Act. The Competent Authority on the ground that the Petitioner had produced only xerox copies and not the originals, came to a conclusion that no triable issues arise and therefore denied leave to defend to the Petitioner by its order dated 4-7-2014. The Competent Authority thereafter on the same day proceeded to decide the main Application No.25 of 2013 and virtually on the

basis of the self same reasons namely that the originals were not produced by the Petitioner coupled with the fact that the licence period has come to an end on 9-11-1995, dismissed the Revision Application by the impugned judgment and order dated 26-11-2015. As indicated above it is the said judgment and order passed by the Revisionary Authority i.e. the Additional Commissioner, Konkan Division, which is taken exception to by way of the above Petition.

5 Heard the Learned Counsel for the parties.

6 The principal contention of the Learned Senior Counsel appearing on behalf of the Petitioner was that the Competent Authority has erred in rejecting the application for leave to defend solely on the ground that the originals were not produced by the Petitioner, without giving an opportunity to the Petitioner to produce the originals. It was the submission of the Learned Senior Counsel that the matter has been further compounded by the Competent Authority by deciding the main Application on the same day itself i.e. on 4-7-2014. It was further the submission of the Learned Senior Counsel that the Revisionary Authority has without considering the aforesaid aspects has mechanically decided the Revision Application.

7 Per contra, the Learned Counsel for the Respondent Mr. Narayanan would support the impugned orders. It was the submission of the Learned

Counsel that inspite of the Petitioner having an opportunity to produce the originals they were not produced. The Learned Counsel sought to make submissions on the merits of the case of the Petitioner based on the documents on which he seeks to rely.

8 Having heard the Learned Counsel for the parties I have considered the rival contentions. The consideration of the application for leave to defend is a vital stage in the proceedings under Section 24. In the said proceedings it is only after the leave to defend is granted that the Respondent to an application filed under Section 24 is able to raise his defences. In the instant case, as indicated above the Petitioner has raised various defences which are mentioned in the application for leave to defend and has also relied upon various documents to buttress the said case. An issue has also been raised as to whether an application filed in the year 2013 would be maintainable considering the fact that the licence period has got over on 9-11-2015.

9 Be that as it may, the Competent Authority as indicated above has non suited the Petitioner only on the ground that the originals of the documents on which the Petitioner relies have not been produced. If the Competent Authority was of the view that the originals were required to be produced by the Petitioner, obviously an opportunity was required to be granted to the Petitioner by issuing a direction in that respect. However,

without doing so, the Petitioner has been non suited solely on the ground that the originals of the said documents have not been produced. Significantly it appears that though the Respondent herein i.e. the Applicant before the Competent Authority had not produced the originals, the Competent Authority without considering the veracity of the claim made by the Applicant in the application that the original of the Leave and Licence Agreement is with the Respondent i.e. the Petitioner herein has proceeded to consider the said application. Hence it appears that different yardsticks have been applied by the Competent Authority to the parties who were before it. Since an opportunity was not granted to the Petitioner to produce the originals of the said documents on which the Petitioner relies, the principles of natural justice can be said to have been breached resulting in the orders passed by the Competent Authority as well as the Revisionary Authority being vitiated on the said ground. The impugned orders are therefore required to be set aside on the said ground and the matter being relegated back to the Competent Authority for a denovo consideration of the said Application No.25 of 2013 including the application for leave to defend.

10 During the course of the hearing of the above Writ Petition, the Learned Senior Counsel appearing on behalf of the Petitioner made it bold to state on instructions that the originals are with the Petitioner and that the same would be produced on remand of the matter before the Competent Authority.

Hence the Competent Authority would give an opportunity to the Petitioner to produce the originals and in the event if it so deems it appropriate by comparing the copies which have been filed by the Petitioner with the originals, return the originals to the Petitioner. The above Petition is accordingly allowed and the following directions are issued:

(i) The order dated 26-11-2015 passed by the Additional Commissioner Konkan Division i.e. the Revisionary Authority is quashed and set aside as also the order dated 4-7-2014 passed by the Competent Authority in Application No.25 of 2013 and the order dated 4-7-2014 rejecting the application for leave to defend would also stand quashed and set aside and the Application is relegated back to the Competent Authority for a denovo consideration.

(ii) The Competent Authority would consider the application for leave to defend filed by the Petitioner, afresh.

(iii) The parties to appear before the Competent Authority on 15-3-2016. The Petitioner to produce originals of the documents on which he relies before the Competent Authority on or before 22-3-2016. The Competent Authority may then follow the course of action as mentioned in the instant order i.e. comparing the copies with the originals and return the originals if it

so deems appropriate.

(iv) In the event, the originals are not produced by 22-3-2016, then the benefit of this order would not enure to the Petitioner and in the said event, the above Petition would then be deemed to have been dismissed.

(v) If the originals are produced by 22-3-2016 the Competent Authority would proceed with the application for leave to defend as also the main Application No.25 of 2013 in accordance with law.

(vi) All the contentions of the parties on merits are kept open for being urged before the Competent Authority including the contention of the Respondent herein i.e. the Applicant before the Competent Authority to refer the documents to the hand writing expert.

(vii) The Competent Authority to hear and decide the application for leave to defend latest by 30-4-2016 and thereafter decide the main application as expeditiously as possible.

(viii) The Learned Senior Counsel on instructions of Mr. Doveson the Advocate representing REX Legalis the Advocates for the Petitioner, makes a statement that the premises are being presently occupied by one Kavita Vaid

and her family, he further makes a statement that no other person would be further inducted in the event the said Kavita Vaid vacates the premises pending the said Application No.25 of 2013. Statement accepted.

11 Rule is accordingly made absolute in the aforesaid terms with parties to bear their respective costs of the above Petition.

[R.M.SAVANT, J]