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IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 428 OF 2016

Mukesh Dharsibhai Thakkar

.. Petitioner

Vs.

Rajnikant Ramanlal Gunderia and others

.. Respondents

Ms.A.R.S.Baxi i/b Mr.S.H.Bohra, Advocate for the Petitioner.

Mr.Kalpesh J.Nansi a/w Ms.Farhana Khan, Advocate for Respondent No.1.

CORAM : R.G.KETKAR, J.

DATED : 18th JANUARY, 2016

P.C. :

. Heard Ms.A.R.S. Baxi, learned Counsel for the petitioner and Mr.Kalpesh J.Nansi, learned Counsel for the respondent No.1 at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner has challenged i) the judgment and order dated 30/10/2012 passed below application for leave to defend ii) the judgment and order dated 30/10/2012 passed in Case No. 3 of 2012 by the Competent Authority, Konkan Division, Mumbai (for short 'Konkan Division') as also iii) the judgment and order dated 16/09/2015 passed by the Additional Commissioner, Konkan Division, Mumbai in Revision Application No. 610 of 2012. By first order dated 30/10/2012, the Competent Authority rejected the

application filed by the petitioner herein for leave to defend. By 2nd order dated 30/10/2012, the Competent Authority allowed the application filed by the first respondent under Section 24 of the Maharashtra Rent Control Act, 1999 (for short 'Act'). Revision Application preferred by the petitioner herein under Section 44 of the Act was rejected by the Additional Commissioner.

3. Ms.Baxi strenuously contended that respondent No.1 executed leave and licence agreement dated 28/10/2006 in favour of the petitioner for a period of 12 months commencing from 01/11/2006 to 31/10/2007. She submitted that the said agreement is not a registered instrument. The respondents in fact intended to sell the suit premises to the petitioner. The application under Section 24 is filed nearly after 5 years which clearly substantiates the case of the plaintiff that respondent No.1 intended to sell the suit premises. In fact, respondent No.1 executed agreement of sale in favour of petitioner some time in June 2007. She further submitted that by order dated 30/10/2012, the Competent Authority rejected the application made by the petitioner for leave to defend and on the same day, allowed the application filed by respondent No.1 under Section 24 of the Act. In other words, she submitted that no opportunity was given to the petitioner to file written statement. She relied upon Section 55 of the Act and contended that leave and licence agreement is compulsorily required to be in writing and is

also required to be registered under the Registration Act, 1908. The responsibility of getting such agreement registered is on the licensor and in the absence of the written registered agreement, the contention of the licensee about the terms and conditions subject to which a premises have been given to him by the landlord on leave and licence or have been let to him, shall prevail, unless proved otherwise. She, therefore, submitted that as the leave and licence agreement is not registered, in terms of the Sub-Section (2) of Section 55 of the Act, the contention of the tenant prevails, unless proved otherwise by the landlord. She, therefore, submitted that the matter may be remitted to the Competent Authority so as to afford an opportunity to contest the application filed by the respondent No.1.

4. On the other hand, Mr.Nansi supported the impugned orders. He submitted that the agreement of sale of June 2007 relied by the petitioner is a forged and fabricated document. Respondent No.1 never executed that agreement. He relied upon Section 24 of the Act and submitted that the agreement of licence in writing is a conclusive evidence of the facts stated therein. He also relied upon the decision of this Court in the case of *Raj Prasanna Kondur Vs. Arif Taher Khan*, **2005(4) BOM.C.R.383** to contend that the right of the landlord under Section 24 to get the person evicted from the premises on expiry of licence is not curtailed in any manner on

account of absence of the agreement being in writing or registered. He also relied upon the decision of this Court (Coram : A.S.Oka, J.) dated 03/05/2010 (Amit B. Dalal v. Rajesh K. Doctor) in Writ Petition No.6587 of 2009 with Writ Petition No. 2832 of 2009

5. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. It is not in dispute that respondent No.1 executed leave and licence agreement in favour of the petitioner on 28/10/2006 for a period of 12 months commencing from 01/11/2006 to 31/10/2007. Thus, entry of the petitioner in the premises in question is as a 'licensee'. Section 52 of the Indian Easements Act, 1882 defines the expression "license" and read thus :

52. **"License" defined.** -Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a license.

6. Though period of 12 months expired on 31/10/2007 that does not mean that status of the petitioner is changed from licensee to either a tenant or as a trespasser as the respondent permitted him to occupy the suit premises. In fact, in view of the Section 52 of the said Act, he continuous to be the licensee in the premises in question.

7. Ms.Baxi relied upon Section 55 of the Act to contend that the

leave and licence agreement is compulsorily required to be in writing and is also required to be registered under the Registration Act, 1908. The responsibility of getting such an agreement registered is on the licensor and in absence of the written registered agreement, the contention of the licensee about the terms and conditions subject to which a premises have been given to him by the landlord on leave and licence or have been let out to him shall prevail, unless proved otherwise. She submitted that as the leave and licence agreement is not registered, the contention of the licensee / tenant prevails, unless proved otherwise by the licensor / landlord. She, therefore, submitted that the matter may be remanded to the competent authority so as to offer an opportunity to contest the application filed by the first respondent.

8. This issue is no longer *res integra*. In the case of Amit B. Dalal (*supra*), the learned Single Judge of this Court has considered Sections 24 and 25 of the Act as also decision of this Court in the case of (1) *Ramesh Ramrao Hate v. Parvez Bhesania*, (1997[1] Mah. L.J. 295, and (2) *Raj Prasanna Kondur* (*supra*). The relevant discussion is in paragraphs-19 to 20, which reads thus :

“19. Thus in both the petitions, the execution of leave and licence agreements is not disputed by the Petitioner. The common issue which arises in both the petitions is regarding the effect of non-registration of the agreement of leave and licence on the clause (b) of explanation to section 24. The other common issue is as regards interpretation of sub section 2 of section 55

of the said Act of 1999. Section 24 of the said Act reads thus:

"24. Landlord entitled to recover possession of premises given on licence on expiry.---(1) Notwithstanding anything contained in this Act, a licensee in possession or occupation of premises given to him on licence for residence shall deliver possession of such premises to the landlord on expiry of the period of licence; and on the failure of the licensee to so deliver the possession of the licensed premises, a landlord shall be entitled to recover possession of such premises from a licensee, on the expiry of the period of licence, by making an application to the Competent Authority, and, the Competent Authority, on being satisfied that the period of licence has expired, shall pass an order for eviction of a licensee.

(2) Any licensee who does not deliver possession of the premises to the landlord on expiry of the period of licence and continues to be in possession of the licensed premises till he is dispossessed by the Competent Authority shall be liable to pay damages at double the rate of the licence fee or charge of the premises fixed under the agreement of licence.

(3) The Competent Authority shall not entertain any claim of whatever nature from any other person who is not a licensee according to the agreement of licence.

Explanation.---For the purposes of this section, ---

(a) the expression "landlord" includes a successor-in-interest who becomes the landlord of the premises as a result of death of such landlord; but does not include a tenant or a sub-tenant who has given premises on licence;

(b) an agreement of licence in writing shall be conclusive evidence of the fact stated therein."

It is not in dispute that under the said Act of 1947, section 13A (2) contained a similar provision. Clause (b) of the explanation to said section 13A (2) and clause (b) of explanation to section 24 of the said Act are identical. The said clause (b) of explanation to section 13A (2) of the said Act of 1947 has been given consistent interpretation by this Court. In the case of Ramesh Ramrao Hate versus Parvez Bhesania (1997[1] Maharashtra law journal 295), this Court interpreted the said clause. In paragraph 8 and 9 , this Court observed thus:

"8. The controversy centres round the explanation (b) which makes a provision that an agreement of licence in writing shall be conclusive evidence of the facts stated therein. Though the expression used in explanation is "conclusive evidence" it cannot be differentiated with the expression "conclusive proof."

"9. Once the legislature by explanation (b) or Section 13A(2) has provided that a written agreement of licence shall be conclusive evidence of the facts stated therein, it provided a special rule of evidence for the purpose of proceedings under section 13A(2) of the Bombay Rent Act. **The intention of the legislature was to give finality to the existence of a fact occurring in the written agreement of leave and licence. In other words legislature intended to shut out any other evidence which would detract from the conclusive of that evidence. The object of expression 'conclusive evidence of fact stated therein' is aimed to give finality to the establishment of the existence of the fact or facts stated in the written leave and licence**

agreement from the proof of another. The argument of learned counsel for the Petitioner that explanation (b) only makes the written agreement of licence conclusive as regards the licensor and not against the licence is very difficult to be appreciated. **Once it is provided by the legislature that an agreement of licence in writing shall be conclusive evidence of the facts stated therein, it prohibits from leading any other evidence which may affect the conclusiveness of that evidence.** The law laid down by the Apex Court in Smt. Somawanti and others' case (supra) is clear answer to the contention of the learned counsel for the Petitioner wherein the Apex Court has held that once the law says that certain evidence is conclusive it shuts out any other evidence which would detract from the conclusiveness of that evidence. Not only that when a certain evidence is made conclusive, it prohibits any other evidence to be led which may detract from the conclusiveness of that evidence, but also the Court has no option to hold the existence of the fact otherwise when such evidence is made conclusive. Once an execution of the agreement of leave and licence is not disputed before the Competent Authority in an application under section 13A(2) based on such leave and licence agreement, it is conclusive evidence of the facts stated therein and no other evidence can be led inconsistent with the said facts by either of the parties and is conclusive between the parties of the facts stated therein. The Competent Authority has no option but to hold that the facts stated therein do exist."

(emphasis added)

In the subsequent decisions, this Court has consistently adopted the said interpretation of clause (b). There is no reason why the ratio of the said decision should not govern the clause (b) of section 24 of the said Act. Thus, in both the cases it will not be open for the Petitioner to lead any evidence to show that the transaction was not of leave and licence but was of tenancy inasmuch as the facts stated in the leave and licence agreement establish that the Petitioner was inducted as a licensee in the suit premises.

19A. Now the question which remains to be decided in both the petitions is of interpretation of sub-section 2 of section 55 and the effect of the said provision on the said clause (b). Section 55 reads thus:

"55. Tenancy agreement to be compulsorily registered.---

(1) Notwithstanding anything contained in this Act or any other law for the time being in force, any agreement for leave and licence or letting of any premises, entered into between the landlord and the tenant or the licensee, as the case may be, after the commencement of this Act, shall be in writing and shall be registered under the Registration Act, 1908 (XVI of 1908).

(2) The responsibility of getting such agreement registered shall be on the landlord and in the absence of the written registered agreement, the contention of the tenant about the terms and conditions subject to which a premises have been given to him by the landlord on leave and licence or have been let to him, shall prevail, unless proved otherwise.

(3) Any landlord who contravenes the provisions of this section shall, on conviction, be punished with imprisonment which may extend to three months or with fine not exceeding rupees five thousand or with both."

In the case of Raj Prasanna (*supra*), while dealing with sub-section 2 of section 55 of the said Act of 1999, in paragraphs 14 and 15 of the judgment, this Court held thus:

"14. The said Clause (b) in the Explanation to section 24 may, at first glance, appears to be contrary to the provisions under section 55 of the said Act, since sub-section (1) of section 55 requires an agreement to be in writing, besides its registration being mandatory, and sub-section (2) thereof provides that in the absence of written registered agreement, the contention of the licensee regarding terms and conditions of the agreement would prevail, unless proved otherwise. It is to be noted that the presumptive value attached to the contention of the licensee in relation to the terms and conditions of the license is for the eventuality of "absence of written registered agreement", whereas, the conclusive evidence spoken of under Clause (b) in the Explanation to section 24 relates to "facts" stated in the written agreement. Harmonious reading of section 55(1) and (2) along with the said Clause (b) in the Explanation to section 24 of the said Act would reveal that though it is mandatory for the landlord to get the agreement of leave and license recorded in writing and registered under the Registration Act, 1908, failure in that regard would warrant consequences as stipulated under section 55 of the said Act, however, once the matter reaches the stage of evidence, and if there is an agreement in writing, though not registered, even then the facts stated in such agreement could be deemed to be conclusively established on the basis of such written agreement itself and there would be no other evidence admissible in that regard. On the other hand, the provisions of section 55(2) and 55(3) of the said Act relate to the consequences of

failure on the part of the landlord to comply with the requirement of registration of the agreement. In other words, though, in terms of subsection (2) of [section 55](#) of the said Act, there will be presumptive value to the contentions of the licensee in respect of the terms and conditions of the agreement is in writing and even though it is not registered, the same, as regards the facts stated therein would be deemed to have been proved conclusively on production of the agreement itself, and in which case, any presumption arising in relation to the terms and conditions of the license contrary to the facts stated in such agreement would stand rebutted.

15. The contention of the learned Advocate for the Petitioner that the absence of registered written agreement would render of license to be invalid and therefore, it would result in the absence of jurisdictional fact to enable the Competent Authority to entertain the application under section 24 of the said Act, cannot be accepted. The jurisdictional fact which is required for the Competent Authority to entertain the application for eviction under [section 24](#) of the said Act is the expiry of license for residence in favour of the person occupying the premises and moment the same is disclosed based on whatever material placed before the Competent Authority, it will empower the Competent Authority to take cognizance of such application and to proceed to deal with the matter. Absence of registration or even the agreement being not in writing, that would not render the license to be invalid....."

(emphasis added)

19B. The contention of the learned counsel appearing for the Petitioner is that if an agreement of leave and licence is not registered, in view of sub-section 2 of section 55 of the said Act, if the a licensee while opposing an application under section 24 contends that in fact what was created was a tenancy and not a licence, the said contention will prevail unless it is proved otherwise by the applicant-licensee. However, sub-section 2 cannot be read in isolation and it will have to be read with sub-section 1. The sub-section 1 makes registration of an agreement of tenancy as well as an agreement of leave and licence compulsory. That is how in sub-section 2 there is a reference to premises being given on leave and licence or the premises being let out to the tenant. Sub-section 2 cannot be so interpreted that it will nullify clause (b) of explanation to section 24. Both the provisions will have to be harmoniously construed. It must noted here that a special remedy for eviction of licensees under section 24 of the said Act is available only to premises given on licence for residential use. Section 55 is applicable not only to licence which is covered by section 24 but also to the licence granted in respect of premises for a use other than residential. The effect of sub-section 2 of section 55 is that in case of licence granted for non-residential use, if the agreement is not registered, it will be open for the opponent licensee to contend that the terms and conditions of the licence agreed between the parties were different from the terms and conditions incorporated under the agreement of leave and licence. When an application for eviction of a licensee in respect of license granted for residential use is made under section 24 of the said Act, to the leave and licence agreement subject matter of such application, explanation (b) will apply and the agreement will to be treated as conclusive evidence of the facts stated therein.

20. There is one more important aspect of the matter. An agreement of leave and licence does not require registration under the Registration Act, 1908

(hereinafter referred to as the said Act of 1908). Section 49 of the said Act of 1908 provides that no document which requires registration either under section 17 or under the Transfer of Property Act, 1882 can be received as evidence of any transaction affecting such property unless it has been registered. Thus section 49 of the said Act is applicable only to the documents which require registration either under section 17 of the said Act of 1908 or under the Transfer of Property Act, 1882. Under the said Act, while providing for consequences of non-registration, the legislature has not chosen to provide for drastic consequences as provided under section 49 of the said Act of 1908. Therefore, non-registration of a document required to be registered under section 55 of the said Act attracts limited consequences provided under sub-section 2 thereof apart from prosecution under sub-section 3. An unregistered document which requires registration under section 55 of the said Act can be read in evidence provided the same is proved and the same is otherwise admissible in evidence. Section 49 of the said Act of 1908 will not be applicable to such document which is required to be registered under section 55 of the said Act. Therefore, a document which requires registration under section 55 of the said Act does not become an invalid document. The presumption under clause (b) of explanation to section 24 of the said Act is applicable only when an application for eviction is filed relating to the premises given on licence for residence. In other proceedings, the said presumption may not apply. Therefore, notwithstanding the non-registration of an agreement in writing of leave and licence in respect of the premises given for residential use, when an application under section 24 is made, the clause (b) will apply to such agreement and it will not be open for the licensee to lead any evidence contrary to the terms and conditions provided in the said agreement.

9. It is also material to note that though the petitioner

contended that the respondent No.1 entered into agreement to sale in his favour in June, 2007, till date he has not instituted the Suit for specific performance of the contract. In view thereof, I do not find that the Authorities below have committed any error in passing the impugned orders. Hence, no case is made out for invocation of powers under Article 227 of the Constitution of India. Petition fails and the same is dismissed.

10. At this stage, Ms.Baxi orally applies for stay of this order for a period o 8 weeks from today. She further states that within two weeks from today, the petitioner will file undertaking to the effect that the petitioner alone is in possession and nobody else is in possession. The petitioner has so far not created third party interest and he will hereafter neither create third party interest nor part with possession. The petitioner will clear arrears of compensation of Rs.5,10,000/- . Out of this amount, the petitioner will directly pay to the respondent No.1 Rs.2,55,000/- within 3 weeks from today and balance Rs.2,55,000/- within 6 weeks from today. She states that copy in advance will be served on the other side. If such undertaking is filed, the same shall stand accepted.

11. Subject to the petitioner filing usual undertaking in the aforesaid terms within 2 weeks from today, after giving advance copy to the other side, notwithstanding dismissal of the Petition, the orders passed by the Authorities below shall not be executed for a

period of 8 weeks from today.

12. It is made clear that if the petitioner fails to deposit the above amounts within the stipulated period, ad-interim order shall stand vacated without further reference to the Court. Respondent No.1. is permitted to withdraw Rs.1,00,000/- deposited with the Competent Authority unconditionally. Order accordingly.

(R.G.KETKAR, J.)