IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9729 OF 2017

Mr. Vijay S. Machindar .. Petitioner
vs.
Mr. Puneet Jitendra Sejpal and ors. .. Respondents

Mr. P.S. Dani, Sr. Advocate a/w. V.S. Kapse i/b H.S. Rajshirke for the Petitioner.

Mr. Vineet Naik, Sr. Advocate a/w. Mr. Bhushan Deshmukh i/b Apeksha Murray i/b Kanga & Co. for Respondent No.1.

CORAM : M. S. SONAK, J.
DATE : 4 SEPTEMBER 2017.

ORAL JUDGMENT :-

1] Not on board. In view of urgency, taken on production board.

2] Heard Mr. Dani, learned Senior Advocate for the petitioner and Mr. Naik, learned Senior Advocate for respondent No.1.

3] Rule. Rule is made returnable forthwith, with the consent of and at the request of learned counsel for the petitioner and respondent No.1 who is really the contesting respondent. Mr. Dani states that respondent Nos.2 and 3 have been duly served. Respondent Nos.2 and 3 have been impleaded in this matter because the orders made by them are under challenge.

4] The impugned orders dated 7th June 2016 and 9th August 2017 decline leave to the petitioner to contest the application made by respondent No.1 under Section 24 of the Maharashtra Rent Control Act, 1999 (MRC Act) seeking eviction of the petitioner from the suit premises on the basis that respondent No.1 is the licensor and the petitioner is licensee in respect of the suit premises and further, the period of license, has already come to an end.

5] Mr. Dani submits that the competent authority, at the stage of deciding whether leave to contest should be granted under Section 43 of the MRC Act, is not entitled to adjudicate upon the merits of the defence raised by the defendant. He submits that the defence raised in this case was that the two leave and license agreements were never intended to be acted upon or were ever acted upon as leave and license agreements, but rather, these agreements were executed as a security for loan transactions under which the petitioners had borrowed a sum of Rs.2.25 crores from the respondent No. 1, which sum, has been duly repaid by the petitioner through banking transactions. Mr. Dani submits that upon repayment of the loan, there was no question of acting on the basis of the alleged leave and license agreements. Mr. Dani submits that the alleged term of the license, even according to the respondent No. 1 expired on 22nd June 2011 but the application seeking eviction has been instituted after three years. Mr. Dani submits that this is evidence of the circumstance that the leave and license agreements were never intended to be acted upon and in any case the application seeking recovery of possession is barred by law of limitation. Mr. Dani submits that these were the substantial defences raised by the petitioner and the competent authority and the appellate authority have exceeded jurisdiction in declining leave to the petitioner to contest the proceedings under Section 24 of the MRC Act.

6] Mr. Naik, learned Senior Advocate for respondent No.1, submits that the proceedings under Section 24 of the said Act are required to be disposed of in a summary manner. The only issues relevant in such proceedings are the existence of a written leave and license agreement and whether, the licensee continues in possession of the suit premises, notwithstanding expiry of the period of license set out in the leave and license agreement. Mr. Naik submits that all other issues, that is issues relating to title, nexus with any alleged underlying transactions etc. are totally alien to the scope of proceedings under Section 24 of the said Act read with Special Provisions contained in Chapter - VIII of the said Act, which are to be disposed off in a summary manner. Mr. Naik relies upon the decision of this Court in ***Ami Merchandising Pvt. Ltd. vs. State of Maharashtra and ors. - 2014 (3) Mh.L.J. 257***, in support of these propositions.

7] Mr. Naik submits that in the present case, the relationship between the parties is governed by registered agreements dated 23rd June 2009 and 20th July 2010, which clearly make out a case of licensor - licensee relationship. Mr. Naik submits that there is also no dispute that the period prescribed in the agreements, has since expired. Mr. Naik submits that since there is no serious dispute on these two aspects, which are the only relevant aspects in proceedings of this nature, leave to defend was rightly denied by the two Courts. Since, the issues raised by the petitioner, apart from being false and frivolous, transgress, limited scope of jurisdiction of the competent authority under the special provisions of the said Act, the impugned orders declining leave to defend were rightly made and warrant no interference.

8] Chapter V of MRC Act is concerned with special provisions for recovery of possession of premises in certain cases. Section 24, which is a part of Chapter V provides for summary disposal of proceedings initiated by a licensor against the licensee for recovery of the licensed premises on the expiry of the license. Section 24 provides that notwithstanding anything contained in the MRC Act, licensee in possession or occupation of the premises given to him license for residence shall deliver possession of suit premises to the landlord on expiry of the period of license; 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 license, by making an application to the competent authority, and, the competent authority, on being satisfied that the period of license has expired, shall pass an order for eviction of a licensee. Sub Section (2) of Section 24 makes a provision for payment of damages by a licensee who does not deliver the possession of the licensed premises to the landlord on the expiry of the period of license. Sub Section (3) of Section 24 provides that 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 license. The explanation in this

Section defines the expression '*landlord*' and further provides that an agreement of license in writing shall be conclusive evidence of the facts stated therein.

9] Chapter VIII of the MRC Act provides for summary disposal of certain applications, including, application under Section 24 of the MRC Act. Section 43, which is a part of Chapter VIII, to the MRC Act, *inter alia* contemplates leave to be applied for by a respondent to contest the proceedings under Section 24, seeking his eviction from the premises. Section 43(4)(a) provides that the licensee on whom summons is duly served in the manner whether or a registered post in the manner laid down in sub Section (3), shall not contest the prayer for eviction from the premises, unless within 30 days of the service of summons on him, he files an affidavit stating grounds on which he seeks to contest an application for eviction and obtains leave from the competent authority to that effect. Section 43(4)(b) provides that the competent authority shall give to the licensee leave to contest the application after the affidavit filed by the licensee discloses such facts as would disentitle the landlord from obtaining an order for recovery of possession of the premises on the grounds specified in Section 24 of the MRC Act. Where leave is granted to the licensee 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 from 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.

10] In this case, the petitioners, in their affidavit seeking leave to contest the proceedings under section 24 of the MRC Act had submitted that the two leave and licenses agreements dated 23rd June 2009 and 28th July 2009 were basically executed as security for loan transactions under which the petitioners had borrowed an amount of Rs.2.25 crores from the respondent No. 1. It was further submitted that the loan amount has since been repaid through banking transactions and post such repayment, there was no question of either parties relying upon the leave and license agreements and seeking eviction on the basis that the term stated in the two agreements, has since expired. A further defence was raised that the application under Section 24 of the MRC Act is barred by limitation, since, according to the petitioners, the cause of action, if any, arose, even according to the respondent No. 1 on 20th June

2011 and the application under Section 24 of the MRC Act was instituted after the expiry of period of three years from the date of alleged accrual of cause of action. The petitioners, in the appeal court, also attempted to place reliance upon a MOU to contend that the same explains the true relationship between the parties.

11] The competent authority, in its order dated 7th June 2016, at the stage of deciding whether leave to contest was granted to the petitioners or not, proceeded to frame issues and decide the question as to whether the respondent no. 1 was entitled to the relief in terms of Section 24 of the MRC Act. The appeal court has endorsed the conclusion recorded by the competent authority. However, the appeal court has noted that from the bank statement placed by the petitioner on record, it is possible to hold that the petitioner has repaid the loan of Rs.2.25 crores to the respondent No. 1. The appeal court has further observed that there is no material on record to establish any nexus between the leave and license agreements and the loan transaction. The appeal court also refused to take cognizance of the MOU on the ground that such MOU was neither referred to nor relied upon by the petitioner in the affidavit seeking leave to contest the application under Section 24 of the MRC Act.

12] At the stage of deciding whether leave to contest in terms of Section 43(4)(b) of the MRC Act is required to be granted or not, the competent authority, is required to consider whether the affidavit filed by the respondents *discloses such facts has not disentitled the landlord from obtaining any order for recovery of possession of the premises on the grounds specified in Section 22 or 23 or 24*. This means that, at this stage, the competent authority is required to apply its mind to determine whether the respondents have raised arguable issues in the affidavit filed by the respondents seeking leave to contest the application under Section 24 of the MRC Act. At this stage, the competent authority is neither required nor expected to adjudicate upon the merits of the claim of the applicant or the merits of the defence raised by the respondents. At this stage, the competent authority is required to examine whether the defence raised by the respondents is an arguable and plausible defence, or whether the defence is totally frivolous and in the nature of a moonshine. At this stage, the competent authority is required to also examine whether the defence raised, is at all a defence which can be gone intro by the competent authority in the summary proceedings under Section 24 of the MRC Act or whether, the defence raised is quite alien to the scope of the said provision. As long as affidavit filed by the respondents discloses such facts as would disentitle the landlord from obtaining an order for recovery of possession of the premises on the grounds specified in Section 24 of the MRC Act, leave to contest is required to be granted. However, one thing is clear that the competent authority, at the stage of deciding whether leave to contest should be granted or not, is not entitled to delve into or adjudicate upon the merits or demerits of the defence or to proceed to decide upon the merits and demerits of the respective cases put-forth by the rival parties. In this case, this is what competent authority appears to have done and to that extent, the order of the competent authority does appear to be in excess of jurisdiction vested in it.

13] The petitioner, as noted earlier, has raised various defences, which, if accepted, may possibly disentitle the respondent No. 1 from recovering the possession of the suit premises on grounds specified in Section 24 of the MRC Act. In support of the defences raised, some material in the form of bank statement has also been produced by the petitioners. In fact, the appeal court, has itself observed that the bank statements produced on record by the respondents indicate the repayment of the amount of Rs.2.25 crores by the petitioners to the respondent No. 1. At this stage, it is not for this Court to go into the issue as to whether this amount represents the loan transaction between the parties and further whether the leave and license agreements relied upon by the respondent No. 1 were intended only as a security in respect of such loan transactions. All that is necessary to observe is that this is not a case where it can be said that the affidavit filed by the petitioner did not even disclose such facts as would disentitle the landlord from obtaining recovery of possession of the suit premises on the grounds specified in Section 24 of the MRC Act or that the defences raised were entirely frivolous or in the nature of a moonshine. These are only *prima facie* observations for the purpose of deciding whether leave to contest was required to be granted in the facts and circumstances of the present case and therefore, these observations, need not influence the competent authority in deciding the matter on its merits and in accordance with law.

14] In *Ami Merchandising Pvt. Ltd.* (supra), this Court, has not held that the competent authority is required to evaluate the claim and the licensor or the defence of the licensee on merits at the stage of considering an application by the respondent (licensee) for leave to contest the proceedings. Therefore, the decision in *Ami Merchandising Pvt. Ltd.* (supra) is of no assistance to the respondent No. 1 in the fact situation in the present case.

15] This is however a case where the petitioner is required to be put to terms. The agreements contemplated payment of compensation by the petitioner at the rate of Rs.40,000/- per month. Notwithstanding the defence, there is no dispute that the petitioner has paid such compensation upto June 2011. The petitioner continues in possession of the suit premises but from July 2011 till August 2017, has paid no compensation. The arrears have therefore run upto Rs.31,20,000/-.

16] Mr. Dani, learned Senior Advocate for the petitioner, on the basis of instructions from the Advocate on record, makes a statement that the petitioner will, without prejudice, to the petitioner's rights and contentions, pay to respondent No.1 the amount of Rs.31,20,000/- within a period of six weeks from today. Further, the petitioner will continue to pay a sum of Rs.40,000/- per month to respondent No.1 on or before 10th day of each succeeding month until disposal of the application under Section 24 of the said Act. These statements are accepted. The petitioner is directed to comply with such statements.

17] In case of default in payment of sum of Rs.31,20,000/- within six weeks from today, the petitioner shall not have the benefit of this order and this petition shall be deemed to have dismissed without any further reference to the Court.

18] The impugned orders are set aside. Leave to contest the proceedings is hereby granted. The competent authority is directed to dispose of the proceedings initiated by respondent No.1 on their own merits and in accordance with law, without being influenced by the observations in the impugned orders or for that matter the observations in the present order as well. All contentions of all parties are, accordingly kept open.

19] The competent authority to endeavour to dispose of the proceedings within a period prescribed under Section 43(4)(c) of the said Act. The parties to cooperate in the matter of disposal of the proceedings within the period as prescribed for.

20] Rule is made absolute to the aforesaid extent. There shall however, be no order as to costs.

(M. S. SONAK, J.)