

Sequeira

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

WRIT PETITION (Stamp) NO. 28073 OF 2016

Vishwanath Gulabrao Ambekar.

.. Petitioner

Vs

Rishi Chandradeo Za.

.. Respondent

Mr.Mihir Raut i/b Nitin Deshpande, for the Petitioner.

Coram : N.M.Jamdar, J.

Date : 16 March 2017.

P.C. :

Heard learned counsel for the Petitioner.

2. The Petitioner has challenged the concurrent Judgments and Orders passed by the learned Civil Judge, Junior Division, Alibaug and District Judge, Raigad, dismissing the suit filed by the Petitioner for declaration that the Petitioner is a tenant of the suit premises.

3. The Petitioner filed a Regular Civil Suit No.48 of 2011 contending that he is tenant of a residential flat situated at Alibaug. The learned Civil Judge, after considering the material on record, came to the conclusion that the Petitioner had failed to prove that he is tenant of the suit premises and held that he is only a licensee. The counter claim filed by the Respondent seeking possession of the suit premises from the Petitioner was allowed. The proceedings were

accordingly disposed of on 3 May 2012. The Petitioner thereafter filed an Appeal No.287 of 2012 in the District Court Alibaug, which was dismissed by the learned District Judge on 30 August 2016.

4. The learned counsel for the Petitioner submitted that the Petitioner is a tenant of the suit property and the Agreement relied upon by both the Courts was not registered and therefore, the conclusion of both the Courts is incorrect in law.

5. A leave and license Agreement was entered into by the parties for a period of eleven months from 1 September 2008 to 31 July 2009. This agreement, though not registered, is admitted by the Petitioner in his cross-examination. Both the Courts have perused the contents of the agreement, which clearly state that the premises were given on leave and license basis. Even though the Petitioner has over-stayed in the suit premises, for which an amount is paid to the Respondent, as rightly held by both the Courts that, that fact alone, in view of the other circumstances, will not be sufficient to declare the Petitioner as a tenant. There is no perversity in the finding of fact that the Petitioner is a licensee. The term of license has expired and counter claim is rightly denied. In these circumstances, no fault can be found with the orders passed by both the Courts. The Writ Petition cannot be entertained and is accordingly rejected.

(N.M.Jamdar, J.)