

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12837 OF 2016**

Suman Ganesh Khengre & Ors

..Petitioners

Vs.

Nandkumar Ramlal Sancheti & Anr

..Respondents

Mr. U. P. Warunjikar for the Petitioners

**Mr. Sunip Sen a/w Ms Tanaya Patankar, i/b Mr. P. M. Jadhav for the
Respondent No.1**

CORAM : R. M. SAVANT, J.

DATE : 4th MAY, 2017

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 30-9-2016 passed by the Learned Adhoc District Judge-1, Pune, by which order, the Appeal filed by the Petitioners being Civil Appeal No.381 of 2015 came to be dismissed and resultantly the order dated 7-2-2015 passed by the Trial Court i.e. the Learned Civil Judge Junior Division, Vadgaon-Maval in Regular Darkhast No.27 of 2012 came to be confirmed.

2 The predecessor of the Petitioners is the obstructionist in the proceedings filed for execution of the decree passed in Regular Civil Suit No.108 of 2003 for possession. The said decree was passed on the ground of bonafide requirement of the landlord i.e. the Respondent No.1 herein. The said decree came to be challenged by the original tenant i.e. the Respondent No.2 herein by filing Writ Petition No.3784 of 2012. The said Writ Petition came to be dismissed by a Learned Single Judge of this Court by order dated

13-3-2013. The Respondent No.2 thereafter did not carry the matter higher and therefore the decree became final and binding.

3 It is upon the decree being put in question by the Respondent No.1 by filing Darkhast proceedings being Regular Darkhast No.27 of 2012 that the predecessor of the Petitioners herein filed an application Exhibit 21 obstructing the execution of the decree. The decree holder filed Application Exhibit 72 for removal of the obstruction. The Application Exhibit 21 was filed by the Obstructionist on the ground that he was protected by the provisions of Section 15(A) read with Section 14 of the Bombay Rent Act as he was in occupation of the premises from the original tenant on the cut of date i.e. 1-2-1973 and therefore he is claiming independently of the tenant. To buttress the said case, the Obstructionist relied upon an agreement of permanent licence allegedly executed by the original tenant on 17-10-1972 as also the rent receipts for various periods from 11-10-1972 to 16-10-2010. The said agreement was marked as Exhibit 56 whereas the rent receipts were marked as Exhibits 57 to 63 by the Executing Court. The case of the Obstructionist was tested on touchstone of the said documents. In so far as the agreement dated 11-10-1972 is concerned, it was executed on a stamp paper which does not disclose on whose behalf it was purchased. The stamp paper only bore the signature under the rubber stamp which is marked as Merchant & Company Attorneys-At Law And Stamp Vendor. In so far as the rent receipts are

concerned, the Executing Court observed that the said rent receipts have been issued for the periods ranging from 2 years at a time to 5 years at a time. This the Executing Court found to be curious having regard to the fact that the predecessor of the Petitioners claimed to be a monthly tenant. The Executing Court further observed that the font in respect of some rent receipts i.e. Exhibits 57, 58, 59 and 66 was same and appeared to be written by the same person in the same ink. The Executing Court therefore did not deem it appropriate to give credence and weightage to the said material produced by the Petitioners, implicit in the said fact was the fact that the Executing Court was suspicious of the authenticity of the said documents. The Executing Court observed that the Petitioners might have been put up by the original tenant to obstruct the execution of the decree. The Executing Court accordingly by its order dated 7-2-2015 rejected the application filed by the Obstructionists setting up the obstruction to the execution of the said decree.

4 The Obstructionists i.e. the Predecessor of the Petitioners thereafter carried the matter in Appeal by way of Civil Appeal No.381 of 2015. As indicated above, the Lower Appellate Court having regard to the material on record did not find any reason to interfere with the order passed by the Executing Court, rejected the application and accordingly dismissed the Appeal by the impugned order by reiterating the findings recorded by the Executing Court.

5 The above Writ Petition has been filed by the heirs of the Obstructionist. The Learned Counsel appearing on behalf of the Petitioners Mr. Warunjikar would contend that the Appellate Court had erred in not taking into consideration the other receipts which have been accepted by the Executing Court. The Learned Counsel would contend that without the other receipts being considered the Appellate Court has decided the Appeal.

6 In my view, it is not possible to accept the said contentions. The question is whether the predecessor of the Petitioners i.e. the Obstructionist qualified to be protected under the provisions of Section 15(A) read with Section 14 of the Maharashtra Rent Control Act. In the said context, it is required to be noted that in the original proceedings there was not a whisper from the tenant i.e. the Respondent No.2 herein as regards the creation of sub tenancy by him prior to 1-2-1973. This has to be viewed in the context of the fact that the Suit was filed in the year 2003, whereas the alleged permanent licence was created in the year 1972. It is also required to be noted that the predecessor of the Petitioners also did not intervene in the proceedings though knowledge can be attributed to him of the pendency of the proceedings. It is only after the original tenant has failed in his endeavour to challenge the decree passed against him that the Obstructionist has sprung up with the documents which have been referred to in the instant order. In my view,

taking an over all view of the documents on which the Obstructionist seeks to rely upon in support of their case that they are the protected licensee being in possession since 1972, the said documents do not inspire confidence to say the least. The observations of the Executing Court therefore do not seem to be out of place.

7 In my view, no case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

8 At this stage, the Learned Counsel appearing for the Petitioners Mr. Warunjikar prays for reasonable time to vacate the suit premises. In the facts and circumstances of the case, the Petitioners are granted time up to 31st December 2017 to vacate and hand over possession of the suit premises on the usual undertaking to be filed in this Court within two weeks from date. If the undertaking is not filed, then the execution proceedings can be proceeded with by the Respondent No.1

[R.M.SAVANT, J]