

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 4930 OF 2017
With
Writ Petition NO. 2045 OF 2018

Prabodh Prakash Shenai

...Petitioner

Versus

Haridas Bakaram Kakade

...Respondent

....

Mr. Shanay Shah a/w. Aniruddha Lad i/b. B.J. Law Office, for the Petitioner.

Mr. Prakash Shenai, C.A. of the petitioner is present in person.

Ms. S.V. Sonawane, Advocate for the Respondent.

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CORAM : R. G. KETKAR, J.

DATE : 19th MARCH, 2018

P.C.

1. Heard Mr. Shanay Shah, learned counsel for the petitioner and Ms. S.V. Sonawane, learned counsel for the respondent, at length.

2. Leave to amend W.P. No. 4930/2017 so as to challenge the order dated 7.10.2015 passed by the Competent Authority, Konkan Division, Mumbai is granted. Amendment shall be carried out within a week. Re-verification is dispensed with.

3. W.P. No. 4930/2017 takes exception to (1) the judgment and order dated 7.10.2015 passed by the Competent Authority, Konkan

Division, Mumbai (for short, 'Competent Authority') rejecting application of the petitioner for leave to defend case No.20/2014, (2) the judgment and order dated 7.10.2015 passed by the Competent Authority in Case No.20/2014 instituted by the respondent under Section 24 of the Maharashtra Rent Control Act, 1999 (for short, 'Act') by which the respondent's application was allowed, and (3) the judgment and order dated 27.1.2017 passed by the Additional Commissioner, Konkan Division, Mumbai (for short, 'Commissioner') in Revision No.352/2016. By that order, the Commissioner rejected the revision application preferred by the petitioner under Section 44 of the Act and upheld the order of the Competent Authority allowing the application under Section 24 of the Act.

4. The controversy between the parties is in respect of flat No.A-401, Akurli Pushkar Accord, Lokhandwala Township, Kandivali (E), Mumbai-400 101 (for short, 'suit premises').

5. It is the case of the respondent that the parties entered into leave and licence agreement on 22.5.2007 for a period of 24 months commencing from 1.6.2007 and ending on 31.5.2009. The monthly compensation agreed between the parties was Rs.9,500/- for first 12 months and Rs.10,500/- for the second year. Said leave and licence

agreement was duly registered with the Sub-Registrar, Borivali. After expiry of the license period, the petitioner requested to further extend the license period. Accordingly, new leave and license was executed between the parties on 15.5.2009 for the period commencing from 1.6.2009 and ending on 31.5.2011. The petitioner agreed to pay Rs.12,200/- for the first 12 months and Rs.13,500/- for the second year. Said license was also registered with the Sub-Registrar, Borivali No.6, Mumbai Suburban District, Bandra, Mumbai. The license period was further extended by leave and licence agreement dated 18.6.2011 for a period of 12 months from 1.6.2011 to 31.5.2012. The last registered leave and licence agreement was executed on 21.4.2012 for the period commencing from 1.6.2012 to 31.5.2014.

6. It is the case of the respondent that the petitioner herein has instituted Suit being R.A.D. Suit No.120/2014 sometime in February, 2014 in the Small Causes Court at Mumbai for declaration of tenancy rights in respect of the suit premises. The respondent, therefore, instituted the proceedings under Section 24 of the Act against the petitioner for recovery of possession of the suit premises.

7. After service of summons, the petitioner filed application for leave to defend. By order dated 7.10.2015, the Competent Authority

rejected the application for leave to defend. By separate order dated 7.10.2015, the Competent Authority allowed the application made by the respondent under Section 24 of the Act and directed the petitioner to hand over vacant and peaceful possession of the suit premises as also pay Rs.36,000/- per month from 1.6.2014 till vacant possession of the suit premises was handed over to the respondent. The respondent was given liberty to appropriate the amount of security deposit, if any.

8. It is the case of the petitioner that he was not given copy of the order dated 7.10.2015 passed by the Competent Authority under Section 24 of the Act. The petitioner was dispossessed sometime in January, 2016 from the suit premises. He immediately applied for certified copy. The petitioner thereafter instituted revision before the Commissioner in March, 2016. By order dated 27.1.2017, the Commissioner rejected the revision application. It is against these orders, the petitioner has instituted W.P. No.4930/2017.

9. In support of this Petition, Mr. Shah strenuously contended that during pendency of the proceedings under Section 24 of the Act, in pursuance of the liberty granted by this Court vide order dated 24.8.2015 in W.P. No.7157/2015, he had filed application under Section 10 of Code of Civil Procedure, 1908 (for short, 'C.P.C.') for staying the

proceedings under Section 24 of the Act pending before the Competent Authority. While passing the order on 7.10.2015, the Competent Authority did not even deal with this application and consequently did not decide the said application.

10. Mr. Shah further submitted that the orders passed by the Competent Authority were without issuing prior notice to the petitioner. He submitted that basically the respondent is not the owner of the suit premises. If the respondent is not the owner of the suit premises, there is no question of his giving suit premises on leave and licence basis. The orders passed by the Competent Authority and the Commissioner do not show application of mind. They are not well reasoned orders. In short, the impugned orders are perverse. He, therefore, submitted that the Petition requires consideration.

11. On the other hand, Ms. Sonawane supported the impugned orders. She submitted that in view of explanation (b) to Section 24 of the Act as also Section 55 of the Act, it is not open to the petitioner to contend that he is a tenant of the suit premises and that there is no relationship of licensor and licensee between the parties.

12. Ms. Sonawane has taken me through the impugned orders and submitted that the Competent Authority as also the Commissioner

have considered the fact that the leave and licence agreements are registered and held that the contention of the petitioner that the suit premises was given on tenancy basis is misconceived. The Authorities below considered the documents placed on record, such as, ration card, voter I.D., Aadhaar card but these documents do not establish that the premises was given on the basis of tenancy. The Authorities below were, therefore, justified in passing the impugned orders.

13. 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 from time to time leave and licence agreements were executed between the parties. It is also not in dispute that all these leave and licence agreements are registered. The last leave and licence agreement was executed on 21.4.2012 for a period of 24 months commencing from 1.6.2012 and ending on 31.5.2014. Even before expiry of the license period on 31.5.2014, the respondent had issued notice on 28.12.2013 giving one month's notice as per the agreement calling upon the petitioner to vacate the suit premises. This was followed by another notice dated 29.12.2013 and lastly notice dated 15.2.2014, which was sent by R.P.A.D., calling upon the petitioner to vacate the suit premises within seven days from receipt of the notice. As the petitioner did not comply with the requisitions, the

respondent instituted the proceedings under Section 24 of the Act before the Competent Authority sometime in January, 2014.

14. Explanation (b) to Section 24 of the Act reads thus :

“24. Landlord entitled to recover possession of premises given on licence on expiry.---

(1) xxxx

(2) xxxx

(3) xxxx

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

(a) xxxx

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

15. Section 55 of the Act 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.

(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.”

16. Explanation (b) to Section 24 of the Act lays down that an agreement of licence in writing is the conclusive evidence of the facts stated therein. Section 55(2) lays down that 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. As in the present case, the leave and license agreement is a registered instrument, it is not open to the petitioner to contend that he is inducted as a tenant in the suit premises.

17. The Competent Authority while rejecting the application for leave to defend has dealt with this aspect in paragraph-10. The Competent Authority also considered the fact that the suit premises is given for residential purpose. Insofar as the order of the Competent Authority in an application under Section 24 of the Act is concerned, in paragraph-9, the Competent Authority referred to various leave and licence agreements executed between the parties and observed that the contention of the petitioner that the suit premises was given on tenancy basis cannot be accepted. As the period stipulated in the leave and licence agreements expired and terminated and even after expiry of the

leave and licence agreements the respondent failed to vacate the suit premises, it shows that the respondent has malafide intention to grab the suit premises.

18. Mr. Shah submitted that the Competent Authority did not consider the application for stay filed by the petitioner under Section 10 of C.P.C.. I do not find any merit in this submission. In the first place, the moot question is whether the proceedings before the Competent Authority can be treated as a suit before a civil Court. Chapter VIII of the Act entitled as “Summary disposal of certain applications” deals with the procedure for disposal of the applications in a summary manner. Section 39 thereof lays down that the provisions of Chapter VIII or any rule made thereunder are having overriding effect notwithstanding anything inconsistent therewith contained elsewhere in the Act or in any other law for the time being in force. Section 42 deals with special provisions for making application to the Competent Authority by landlord to evict tenant or licensee.

19. Section 43 lays down the special procedure for disposal of applications. Sub-section 4(a) thereof lays down that the licensee on whom the summons is duly served in the ordinary way or by registered post in the manner laid down in sub-section (3) shall not contest the

prayer for eviction from the premises, unless within thirty days of the service of summons on him as aforesaid, he files an affidavit stating grounds on which he seeks to contest the application for eviction and obtains leave from the Competent Authority and in default of his appearance in pursuance of the summons or his obtaining such leave, the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant or the licensee, as the case may be, and the applicant shall be entitled to an order for eviction on the ground aforesaid. It is only in the event of the Competent Authority granting leave to contest the application, it has to follow the procedure laid down under Section 43(4)(c) of the Act.

20. Mr. Shah relied upon the order of this Court dated 24.8.2015 passed in Writ Petition No.7157/2015. A perusal of that order merely shows that the petitioner herein was granted liberty to file application for stay before the Competent Authority which was seized of application No.20/2014. Mr. Shah submitted that the petitioner has instituted Suit for declaration of tenancy rights in Small Causes Court. He, therefore, filed application under Section 10 of C.P.C. for stay of the proceedings under Section 24 of the Act.

21. In the case of **Aspi Jal and another vs. Khushroo Rustom**

Dadyburjor, (2013) 4 SCC 333, the Apex Court observed in paragraph-

9 thus :

“9. Section 10 of the Code which is relevant for the purpose reads as follows:

“10. Stay of suit.- No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court.

Explanation.- The pendency of a suit in a foreign Court does not preclude the Courts in India from trying a suit founded on the same cause of action.”

From a plain reading of the aforesaid provision, it is evident that where a suit is instituted in a Court to which provisions of the Code apply, it shall not proceed with the trial of another suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties. For application of the provisions of Section 10 of the Code, it is further required that the Court in which the previous suit is pending is competent to grant the relief claimed. The use of negative expression in Section 10, i.e. "no court shall proceed with the trial of any suit" makes the provision mandatory and the Court in which the subsequent suit has been filed is prohibited from proceeding with the trial of that suit if the conditions laid down in Section 10 of the Code are satisfied. The basic purpose and the underlying object of Section 10 of

the Code is to prevent the Courts of concurrent jurisdiction from simultaneously entertaining and adjudicating upon two parallel litigations in respect of same cause of action, same subject matter and the same relief. This is to pin down the Plaintiff to one litigation so as to avoid the possibility of contradictory verdicts by two courts in respect of the same relief and is aimed to protect the Defendant from multiplicity of proceeding.”

22. In the present case, it cannot be said that the Courts of concurrent jurisdiction are simultaneously entertaining and adjudicating upon two parallel litigation in respect of the same cause of action and the same relief.

23. *Prima facie* the application under Section 10 of C.P.C. itself was misconceived in view of Explanation (b) to Section 24 and Section 55 of the Act.

24. In the present case, the Competent Authority had declined to grant leave to defend to the petitioner. In view of express language employed in Section 43(4)(a) of the Act, the respondent landlord is entitled to the order of eviction on the ground stated in the application under Section 24 of the Act.

25. In view thereof, I do not find that the Competent Authority committed any error in passing the orders on 7.10.2015 and also the Commissioner in passing the order on 27.1.2017. Mr. Shah submitted

that the orders do not show application of mind as also they are not reasoned orders. Said submission is stated to be rejected. In view of Explanation (b) to Section 24 of the Act as also Section 55 of the Act, it is not open for the petitioner to contend that the petitioner is a tenant and that the respondent is not the owner of the suit premises.

26. Lastly, Mr. Shah submitted that the orders dated 7.10.2015 were not served on the petitioner. The petitioner was dispossessed in January, 2016 and he applied for certified copy. The petitioner instituted Revision Application in March, 2016. It is not possible to go into this aspect which raise highly disputed questions of facts. That apart, I have already upheld the validity of the impugned orders. Hence, no case is made out for interfering with the impugned orders. W.P. No.4930/2017 fails and the same is dismissed.

27. As the suit is instituted by the petitioner for declaration of tenancy rights in the Small Causes Court, the same shall be decided on the basis of evidence on record and in accordance with law uninfluenced by the observations made herein. The learned trial Judge, however, will not proceed with the suit till such time the petitioners pays the arrears of compensation as ordered by the Competent Authority.

28. This brings me to W.P. No.2045/2018. Mr. Shah has not pressed challenge to the order dated 24.10.2017 passed by the learned trial Judge below Exhibit-41. Insofar as the challenge to the order dated 5.10.2017 below Exhibit-39 is concerned, by that order the learned trial Judge rejected the application made by the petitioner/plaintiff for direction to the respondent/defendant to produce original agreement of 1996. In paragraph-3, the learned trial Judge noted that the respondent/defendant had denied the existence of document production of which is sought by the plaintiff. Ms. Sonawane reiterates the statements that these documents are not in existence. In view of this statement, the challenge to order dated 5.10.2017 below Exhibit-39 also does not survive.

29. Insofar as the challenge to the order dated 5.10.2017 below Exhibit-32 is concerned, by that order the learned trial Judge rejected the application made by the petitioner/plaintiff under Order VI Rule 17 of C.P.C. to amend the plaint. Mr. Shah, on instructions from the petitioner who is present in the Court, states that the petitioner will withdraw the application Exhibit-32 with liberty to file fresh application as in the application Exhibit-32 the proposed amendment was not set out. In view thereof, on the motion made by Mr. Shah, permission to withdraw the application Exhibit-32 with liberty to file fresh application

under Order VI Rule 17 of C.P.C. is granted. Grant of such liberty shall not be construed as an expression of merits either way. All contentions of the parties are expressly kept open. W.P. No.2045/2018 is disposed of in aforesaid terms. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)