

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 12860 OF 2017

Ms. Rifath Sadiq	...Petitioner
<i>Versus</i>	
Mr. Naresh Mehta C.A. of	
Smt. Nishita Mehta	
And Ors	...Respondents

With
Civil Application No.374 of 2018
In
Writ Petition NO. 12860 OF 2017

....
Mr.Vikrant V. Parashurami, Advocate for the Petitioner.
Mr. Johnson John, Advocate for Respondent No.1.
....

CORAM : R. G. KETKAR, J.

DATE : 06th MARCH, 2018

P.C.

1. Heard Mr. Vikrant Parashurami, learned counsel for the petitioner in W.P. No.12860/2017 & for opponent in Civil Application No.374/2018 and Mr.Johnson John, learned counsel for respondent No.1 in W.P. No.12860/2017 & for the applicant in Civil Application No.374/2018, at length.

2. The respondent, hereinafter referred to as the 'licensor', had

filed the proceedings under Section 24 of the Maharashtra Rent Control Act, 1999 (for short, 'Act') being Case No.38/2016 for recovery of possession of Flat No.703, Neel Sagar, Opp. Bandra Reclamation ground, Near Lilavati Hospital, Bandra (W), Mumbai – 400 050 (for short, 'suit premises') on the ground that the parties executed the registered leave and licence agreement on 16.8.2015. The petitioner, hereinafter referred to as the 'licensee' was liable to pay a sum of Rs.2 Lakhs as a security and Rs.70,000/- as a monthly compensation. The period of licence was 24 months commencing from 16.8.2015 and ending on 15.8.2017. On behalf of the licensor, notice was issued on 5.2.2016 terminating the leave and licence and calling upon the licensee to hand over possession of the suit premises. As the licensee did not hand over possession, the licensor instituted proceedings under Section 24 of the Act.

3. By order dated 27.6.2017 the Competent Authority, Konkan Division, Mumbai (for short, 'Competent Authority') rejected the application made by the licensee for leave to defend Case No.38/2016. On the same day, the Competent Authority allowed the application under Section 24 of the Act made by the licensor and directed the licensee to hand over vacant and peaceful possession of the suit premises. The Competent Authority further directed the licensee to pay

to the licensor Rs.1,40,000/- per month from 15.8.2015 till vacant possession of the suit premises is delivered.

4. Aggrieved by that order, the licensee preferred Revision Application. It appears that by order dated 31.7.2017, the Additional Commissioner, Konkan Division, Mumbai (for short, 'Commissioner') stayed the eviction order subject to the licensee depositing Rs.2 Lakhs on or before 8.8.2017 before the Competent Authority. As the licensee did not comply that condition, by order dated 12.10.2017, the stay was vacated. It is against this order, the licensee has instituted above Petition.

5. This Petition was heard on 24.11.2017. The order dated 24.11.2017 records that the licensee handed over a cheque of Rs.2,00,000/- drawn in favour of the Competent Authority. In view thereof, it was directed that the execution will not proceed till 30.11.2017 and the matter was adjourned.

6. On 7.12.2017, the matter was heard. On behalf of the licensee, cheque dated 11.12.2017 in the sum of Rs.31,60,000/-, computed at the rate of Rs.1,40,000/- per month from 15.8.2015 for 24 months, was tendered. The amount due for September, October, November and December 2017 at the rate of Rs.1,40,000/- was ordered

to be deposited by 18.12.2017 with the Registrar General, High Court, Bombay. The licensor was permitted to withdraw 50% first on the aggregate deposit and then on the monthly deposits to be made till disposal of the revision application filed before the Commissioner. The statement of Mr. Johnson, on instructions, that all the proceedings under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'N.I. Act') wherever filed will be withdrawn by 18.12.2017 as entire amount claimed by the licensor has been deposited in this Court, was recorded. The Petition was disposed of after issuing certain directions.

7. The Petition was thereafter listed before this Court on 6.2.2018 as the cheque issued by the licensee was dishonored. Civil Application taken out by the licensor was adjourned to 9.2.2018.

8. In the order dated 9.2.2018, the statement of the licensee that payment of the said deposit by issuing fresh Pay Orders will be made within two weeks, was recorded.

9. The matter was thereafter heard on 16.2.2018. On 16.2.2018, the licensee filed affidavit tendering unconditional apology for not complying the order. In paragraph-6 of the affidavit she undertook to pay the amount due in a structured manner in four installments as under :

Sr. No.	Amount in Rupees (Rs.)	Payment up to date
1	5,10,000/-	28/02/2018
2	10,10,000/-	30/03/2018
3	10,50,000/-	30/04/2018
4	10,50,000/-	30/05/2018

10. A perusal of the table, extracted above, shows that Rs.5,10,000/- was due and payable on 28.2.2018. Mr. Parshurami states that the licensee was unable to pay Rs.5,10,000/- by 28.2.2018. He seeks time. It is not possible to accede to this request as though the licensee gave solemn undertaking to this Court to make the payment in a structured manner, she did not pay the first installment which was due on 28.2.2018.

11. A perusal of paragraph-3 of the order dated 16.2.2018 of this Court also shows that acceptance of the undertaking of the licensee did not mean that the grievance of the licensor of non-compliance of the order was totally overlooked.

12. Mr. Johnson states that in pursuance of the order dated 7.12.2017, the licensor has withdrawn all the proceedings under Section 138 of N.I. Act. Mr. Johnson further states that as on 28.2.2018, the licensee is in arrears of Rs.42 Lakhs.

13. Though indulgence was shown to the licensee to pay the amount in four installments, the licensee has not made payment of the first installment despite giving undertaking to this Court. In view thereof, it is not possible to continue the interim order. Hence, interim order granted by this Court pending revision application stands vacated. In case, the licensor recovers possession of the suit premises pending revision, he shall not part with possession nor create third party interest and abide by the outcome of the Revision. Before proceeding with the Revision Application, the Commissioner will ensure that the licensee deposits the amount of Rs.42 Lakhs either before the Commissioner or the Competent Authority. If the licensee does not pursue revision, the licensor would be at liberty to recover the amount due and payable by the licensee in accordance with law. In that event, the licensor will be permitted to revive all the proceedings wherever filed under Section 138 of N.I. Act by filing appropriate application. If such application is made, the concerned Court will revive those proceedings. Writ Petition is already disposed of. Civil Application No.374/2018 also stands disposed of. Order accordingly.

(R. G. KETKAR, J.)