

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO.2514 OF 2017

Vitthal Bapuji Kharade ... Petitioner  
Vs.  
Saroj Radhakrishan Joshi @ Saroj Sumit Pareek ... Respondent

WITH  
CIVIL APPLICATION NO.1769 OF 2018 IN W.P.NO.2514 OF 2017

Saroj Radhakrishan Joshi @ Saroj Sumit Pareek ... Applicant

In the matter between  
Vitthal Bapuji Kharade ... Petitioner  
Vs.  
Saroj Radhakrishan Joshi @ Saroj Sumit Pareek ... Respondent

Mr. Akhilesh Singh for Petitioner.  
Mr. Siddhartha R. Ronghe i/b. Mr. Mahesh Thorat for Respondent.

**CORAM : R. G. KETKAR, J.**  
**DATE : AUGUST 13, 2018**

**P.C. :**

Heard Mr. Singh, learned Counsel for the petitioner and  
Mr. Ronghe, learned Counsel for the respondent at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner has challenged - (i) the judgment and order dated 03.07.2012 below application filed by the petitioner for leave to defend (for short 'first order'); (ii) the judgment and order dated 03.07.2012 in Case No.54 of 2011 filed by the respondent under Section 24 of the Maharashtra Rent Control Act, 1999 (for short 'Act') (for short 'second order'). Both these orders are passed by the Competent Authority, Konkan Division, Mumbai (for short 'Competent Authority') and (iii) the judgment and order dated 17.01.2017 passed by the Commissioner, Konkan Division, Mumbai (for short 'Commissioner') in Revision No.1219 of 2016. By

the first order dated 03.07.2012, the Competent Authority rejected the application made by the petitioner seeking leave to defend Case No.54 of 2011. By the second order dated 03.07.2012, the Competent Authority allowed Case No.54 of 2011 filed by the respondent under Section 24 of the Act and directed the petitioner herein to handover the vacant and peaceful possession of flat No.103 on the first floor of the building known as 'Bhawani Park', now known as 'Bhawani Park Co-operative Housing Society Limited' standing in the layout of land bearing Survey No.43-A, Hissa No.11 (Part), Survey No.44, Hissa No.1 and Survey No.45, Hissa No.2 situate, lying and being at Village Bhayandar, Taluka and District Thane (for short 'suit premises'). The petitioner is further directed to pay to the respondent the arrears of compensation of Rs.3,15,200/- and double the rate of licence fee of Rs.3,000/- per month i.e. Rs.6,000/- per month as and by way of damages with effect from 01.07.2011 till vacant possession of the suit premises is delivered to the respondent. By order dated 17.01.2017, the Commissioner rejected the Revision Application filed by the petitioner and confirmed the order passed by the Competent Authority.

3. In support of this Petition, Mr. Singh submitted that respondent came with the case that on 13.08.1999, agreement for leave and licence was executed between the respondent and the petitioner herein. By that agreement, petitioner was inducted as a licensee. The period of licence commenced on 13.08.1999 and ended on 12.07.2000. The proceedings under Section 24 are filed by the respondent before the Competent Authority in the year 2011. During this period and even prior to filing of the proceedings before the Competent Authority under Section 24, no correspondence was made by the respondent with the petitioner. Even respondent did not claim any compensation from the petitioner. He invited my attention to the agreement of leave and licence which is executed on the stamp paper of Rs.20/-. The stamp paper is purchased in

the name of Vimal Jain and Sampat Jain. They have no concern whatsoever with the suit premises. He submitted that the agreement of leave and licence cannot be read in evidence and is hit by Section 34 of the Maharashtra Stamp Act.

4. Mr. Singh submitted that respondent claims to have acquired the suit premises on the basis of agreement of sale dated 23.05.2000 entered into between M/s. Bhairav Enterprises (builders) on one hand and respondent, on the other. He invited my attention to the receipt issued by M/s. Bhairav Enterprises. In the first place, the said receipt does not bear signature of the proprietor of M/s. Bhairav Enterprises. Secondly, respondent claims to have issued diverse cheques of Dena Bank between 25.05.1998 and 15.04.1999 in the sum of Rs.4,55,000/-. The petitioner had sought information under the Right to Information Act, 2005 from Dena Bank as to whether the cheques were encashed from the account maintained by the respondent. By communication dated 06.07.2012, petitioner was informed that as per the circular issued by the Reserve Bank of India, the Bank maintains record upto 8 years. As the record of more than 14 years back is sought, the said record is not traceable.

5. Mr. Singh further submitted that respondent claims to have executed leave and licence agreement on 13.08.1999 and claims to have inducted the petitioner as a licensee in the suit premises. He invited my attention to the possession letter dated 23.05.2000 addressed by the respondent to M/s. Bhairav Enterprises, recording therein that the possession of the suit premise was taken on 23.05.2000. In other words, as the respondent herself received possession of the suit premises on 23.05.2000, she could not have inducted the petitioner in the suit premises in pursuance of leave and licence agreement on 13.08.1999. He submitted that the leave and licence agreement is a forged and

fabricated document and does not bear the signature of the petitioner. In fact, petitioner has filed private complaint against the respondent for offence punishable under Sections 465, 468, 470, 471, 193, 196, 200 Indian Penal Code, 1860 read with Section 34 of the Maharashtra Stamp Act. By order dated 18.10.2013, the learned Magistrate, after perusing the documents, observed that prima facie it reveals that respondent (accused therein) has committed offence under Sections 465, 468, 470 and 471 I.P.C. and issued process. The respondent filed application exhibit-12 in that complaint for discharge. By order dated 01.01.2015, the learned Judicial Magistrate dismissed the application. Thus, prima facie, the case of forgery made by the respondent is established. He further submitted that the alleged cheques referred in the receipt to the agreement of sale dated 23.05.2000 are bogus cheques.

6. Mr. Singh submitted that petitioner has instituted Regular Civil Suit No.90 of 2017 in the Court of Civil Judge, Senior Division, Thane inter alia praying for – (a) cancellation of - (i) leave and licence agreement dated 13.08.1999 and (ii) agreement for sale dated 23.05.2000 under Section 31 of the Specific Relief Act, 1963, and (b) declaration that petitioner is the absolute owner of the suit premises. The Suit is pending.

7. Mr. Singh submitted that on 11.09.1999, father of the respondent had sold the suit premises by accepting Rs.5,25,000/- from the petitioner. The father of the respondent expired on 18.10.1999. He relied upon Section 24(3) and 31 of the Act and the following decisions:

- a. ***Vijesh Chawla Vs. Jacob Verghese*, 2016 (3) ALL M R 585; and**
- b. ***Merces Builders Private Limited Vs. Shaikh Mohammad Hanif Bepari*, 2017 (5) ALL MR 401.**

8. On the other hand, Mr. Ronghe supported the impugned orders. He submitted that the receipt dated 11.09.1999 relied by the petitioner was not produced before the Competent Authority and the same was produced for the first time during the course of hearing before the Commissioner at the time of disposing of the Revision Application on 17.09.2014. He submitted that the contention of the petitioner that by agreement for sale dated 23.05.2000, respondent had purchased the suit premises and that possession of the suit premises was handed over to her on 23.05.2000, is contrary to the record. He submitted that the schedule of payment is reflected in clause 3 of the agreement for sale dated 23.05.2000. The first payment of Rs.1,00,000/- was made by cheque dated 23.05.1998 and the last payment of Rs.3,00,000/- was made by cheque dated 15.04.1999. As the respondent has paid entire consideration, she was thereafter given possession of the suit premises. In fact, even the receipt dated 11.09.1999 relied by the petitioner, itself, records that possession of the suit premises was given to the petitioner in the last week of July 1999 and first week of August 1999. It is, therefore, not open to the petitioner to contend that at the time of execution of the leave and licence agreement on 13.08.1999 as the respondent was not given possession, she could not have executed the leave and licence agreement and inducted petitioner as a licensee in the suit premises.

9. Mr. Ronghe further submitted that even otherwise, the reliance placed by the petitioner on receipt dated 11.09.1999 is wholly misconceived. The father of the respondent was not the owner of the suit premises. He further submitted that while allowing the application under Section 24 of the Act on 03.07.2012, the Competent Authority directed the petitioner to pay to the respondent Rs.3,15,200/- towards the arrears of compensation and double the rate of the licence fee of Rs.3,000/- i.e.

Rs.6,000/- per month towards damages. Till date, petitioner has not complied the said direction. He invited my attention to explanation (b) to Section 24 of the Act to contend that an agreement of licence in writing is the conclusive evidence of facts stated therein. He has also invited my attention to C.A.No.1769 of 2018 filed by the respondent inter alia praying for direction to the petitioner to pay the arrears of Rs.11,40,400/- to the respondent directly and / or deposit the same in this Court. For all these reasons, he submitted that no case is made out for invocation of powers under Article 227 of the Constitution of India.

10. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, the Respondent has filed proceedings under Section 24 of the Act before the Competent Authority against the petitioner. After service of the summons, petitioner filed application for leave to defend. By the first order dated 03.07.2012, the Competent Authority rejected the application for leave to defend. In paragraph 5, the Competent Authority noted that though the petitioner herein is disputing the ownership of the respondent in respect of the suit premises as also denying execution of leave and licence agreement, respondent has produced share certificate issued by the Society, which is in her name. The Competent Authority, therefore, came to the conclusion that as the respondent has executed leave and licence in favour of the petitioner, and has inducted the petitioner as a licensee, no triable issues are raised by the petitioner. The Competent Authority also dealt with the contention of the petitioner that he had paid huge consideration to the respondent's father for purchasing the suit premises but did not obtain receipts for payments so made. The Competent Authority also referred to the application for leave to defend, where petitioner admitted that he is a tenant of the respondent. As against this, respondent produced leave and licence agreement of the year August 1999. The Competent

Authority came to the conclusion that the suit premises was given to the petitioner on leave and licence basis. The Competent Authority further observed that the petitioner herein with an intention to grab the premises is not handing over possession thereof to the respondent.

11. By the second order dated 03.07.2012, the Competent Authority allowed the application filed by the respondent under Section 24 of the Act. Explanation (b) to Section 24 and Section 43(4)(a) of the Act read thus,

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

43 Special procedure for disposal of applications.-  
(1) to (3) ...

(4)(a) The tenant or 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 as hereinafter provided, 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.”

12. A perusal of explanation (b) to Section 24 shows that an agreement of licence in writing is conclusive evidence of the facts stated therein. In the present case, respondent has produced agreement of licence in writing. In view of explanation (b) to Section 24, an agreement of licence in writing is conclusive evidence of facts stated therein. A perusal of Section 43(4)(a) shows that the tenant or licensee on whom the summons is duly served is precluded from contesting the prayer for eviction, unless within thirty days of the service of summons

on him, 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 is entitled to an order for eviction on the ground aforesaid. In the present case, the Competent Authority rejected the application for leave to defend. In view of the express language employed in Section 43(4)(a), the consequences provided therein would follow. Accordingly, the Competent Authority allowed the application filed by the respondent under Section 24 of the Act.

13. Aggrieved by this decision, petitioner had instituted Revision Application No.372 of 2012, which was allowed on 17.09.2014 by the Commissioner on the ground that no opportunity was given to the petitioner to contest the proceedings under Section 24 of the Act. Aggrieved by that decision, respondent preferred Writ Petition No.2417 of 2015, which was allowed on 01.10.2016. The order dated 17.01.2014 was set aside and the matter was remitted before the Commissioner. Revision Application was restored with direction to the Commissioner to consider the contention advanced on behalf of the respondent herein about the arrears of compensation while considering the confirmation of interim relief.

14. In pursuance thereof, the Commissioner has disposed of the Revision Application on 17.01.2017. In paragraph 5, the Commissioner dealt with the contention of the petitioner that he had purchased the suit premises from the father of the respondent on 11.09.1999 by paying Rs.5,25,000/-. In paragraph 7, the Commissioner observed that petitioner

herein failed to produce on record any document which proves his right in the premises. As noted earlier, petitioner is relying upon the receipt dated 11.09.1999 to contend that he has purchased the suit premises. The said document is not a registered instrument and is also not adequately stamped. Prima facie, receipt dated 11.09.1999 cannot be construed as a conveyance in favour of the petitioner. At the highest, it can be construed as an agreement for sale. Section 54 of the Transfer of Property Act, 1882 defines 'contract for sale' and it reads thus,

“Contract for sale.- A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties.

It does not, of itself, create any interest in or charge on such property.”

15. In the Suit filed by the petitioner, no prayer for specific performance is made. That apart, a perusal of the definition of 'contract for sale' clearly shows that a contract for the sale of immovable property does not, of itself, create any interest in or charge on such property. In other words, the agreement of sale does not create any interest in the immovable property. I, therefore, do not find that the Commissioner has committed any error in dismissing the Revision Application.

16. Mr. Singh submitted that when the receipt was executed on 11.09.1999, the Society was not registered, and therefore, there was no question of obtaining share certificate from the society. He submitted that the society was registered on 18.06.2001. A perusal of the record shows that the share certificate was issued in the name of the respondent on 02.03.2002. No correspondence exchanged by the petitioner either with the society or with the respondent or respondent's father is brought on record by the petitioner to the effect that after issuance of share certificate on 02.03.2002, he called upon the society or the respondent or her father to handover original share certificate or to transfer share

certificate in his favour.

17. Mr. Singh relied upon the decision in **Vijesh Chawla's case** (*supra*). In that case, the petitioner was non-suited on the ground that the documents produced on record are the photocopies and not the originals. This Court remitted the matter to the Competent Authority for *de novo* consideration. In my opinion, the said decision has no application in the facts of the present case. He also relied upon the decision in **Merces Builders Private Limited** (*supra*). In that decision, it was held that in a Suit for specific performance, even an unregistered document affecting immovable property and which is otherwise required to be registered, could be admitted as evidence of contract. Even this decision is not applicable in the facts of the present case.

18. In the light of the aforesaid discussion, I do not find any case is made out for invocation of powers under Article 227 of the Constitution of India. Hence, Petition fails and the same is dismissed.

19. In view of the dismissal of the Petition, Civil Application No.1769 of 2018 does not survive and the same is disposed of reserving liberty to the respondent to take out appropriate proceedings in the Suit filed by the petitioner under Order XXIX, Rule 11 of C.P.C. for dismissal of their Suit for non compliance of the order passed by the Competent Authority on 03.07.2012. In addition, respondent is at liberty to recover the amount as a land revenue.

20. Before parting with the Petition, it is necessary to make a brief reference to the attempt made by the petitioner and his Advocate for forum shopping and avoiding this Court. The matter was heard on 12.03.2018. The petitioner appeared in person and sought time on the ground that his Advocate is out of Station. At his request, hearing of the

Petition was deferred till 27.03.2018. On 27.03.2018, due to paucity of time, Petition was adjourned to 25.04.2018. On 25.04.2018, at the request of the petitioner's Advocate, the matter was adjourned to the next day i.e. 26.04.2018. The petitioner, though had engaged Advocate, made application on 25.04.2018 before the Hon'ble the Acting Chief Judge for transferring the proceedings before some other Court on the ground that this Court had decided Writ Petition No.2417 of 2015 against the petitioner, and therefore, he will not get justice from this Court. The Registry declined to entertain that application as the petitioner was represented by the Advocate. In view of the application made by the petitioner on 25.04.2018 to the Hon'ble the Acting Chief Justice, hearing of the Petition was adjourned beyond Summer Vacation i.e. 13.06.2018. As the assignment of this Court continued after Summer vacation, petitioner made fresh application on 11.06.2018 before the Hon'ble the Acting Chief Justice for transferring the Petition to the other Court. On 13.06.2018, due to paucity of time, matter was adjourned to 11.07.2018. On 11.07.2018, petitioner appeared in person and matter was adjourned to 12.07.2018. On 12.07.2018, at the request of Mr. Singh, matter was adjourned to 19.07.2018. At that time, pendency of the application dated 11.06.2018 was not brought to the notice of this Court. On 20.07.2018, Mr. Singh, on instructions of the petitioner, stated that he has made application dated 20.07.2018 to the Hon'ble the Acting Chief Justice for placing this matter before any other Court. As the respondent seriously objected to the adjournment, hearing of the Petition was deferred till 07.08.2018 so as to enable the petitioner to obtain necessary orders from the Registry. It is painful to note that even Advocate appearing for the petitioner has made application before the Hon'ble the Acting Chief Justice on 20.07.2018 on the ground that petitioner is not willing to proceed before this Court and his matter be assigned to any other co-ordinate Bench. The Hon'ble Acting Chief Justice has passed

administrative order placing the Petition as per Roaster. I have accordingly heard the Petition. In normal circumstances, I would have issued contempt proceedings against the petitioner as also his Advocate as their acts prima facie amount to interference in the administration of justice. However, as I have dismissed the Petition, I refrain from taking action against them.

21. At this stage, Mr. Singh orally applies for stay of this order for a period of 4 weeks from today. Mr. Ronghe opposes this application.

22. It is not in dispute that petitioner has not complied order dated 03.07.2012 passed by the Competent Authority. Section 24(2) of the Act reads thus,

**“24. Landlord entitled to recover possession of premises given on licence on expiry.- (1) ...**

(2) Any licensee who does not deliver possession of the premises to the landlord on expiry of the period of licence and continues to be in possession of the licensed premises till he is dispossessed by the Competent Authority shall be liable to pay damages at double the rate of the licence fee or charge of the premises fixed under the agreement of licence.”

23. As the petitioner has not deposited any compensation as also did not comply Section 24(2) and the order dated 03.07.2012, no case is made out for staying this order. Hence, oral application is rejected.

**(R. G. KETKAR, J.)**