

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION (ST) NO.5587 OF 2018
WITH
WRIT PETITION NO.2355 OF 2018

Mr. Sam Ahmed Bombay | Petitioner

Vs.

Mrs. Roshni Yousuf Dewji and others | Respondents

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Mr. B.K. Barve a/w Mr. Balvendra Singh i/b B.K. Barve & Co., for
Petitioner.

Mr. Prakash Jain a/w Mr. Kedar D. Khambete, Laxmi Dhirajlal
Bhanushali, for Respondent Nos. 1 to 4 in Writ Petition No.5587 of
2018 and for Respondent No.1 in Writ Petition No. 2355 of 2018.

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CORAM : R.G. KETKAR, J.

DATE : 26TH FEBRUARY, 2018.

P.C.

Heard Mr. B.K. Barve, learned Counsel for the Petitioner
and Mr. P.D. Jain, for Respondent Nos. 1 to 4 in Writ Petition (ST)
No.5587 of 2018 and for Respondent No.1 in Writ Petition No. 2355
of 2018 at length. Rule. Mr. Jain wavier service. Having regard to the
controversy raised in the Petitions and at the request and by consent
of the parties, Rule is made returnable forthwith and the Petitions
are taken up for final hearing.

2. Writ Petition (ST) No.5587 of 2018 challenges;
 - (1) the judgment and order dated 16th November, 2017 passed by the Competent Authority (Rent Act), Kokan Division, Mumbai (for short 'Competent Authority') in an application filed by the petitioner for leave to defend Application No.114 of 2017. By that order, the Competent Authority rejected the application for leave to defend.
 - (2) the judgment and order dated 16th November, 2017, passed by the Competent Authority in Application No. 114 of 2017 filed by respondents No.1 to 4 u/s 24 of the Maharashtra Rent Control Act, 1999 (for short 'Act'). By that order, the Competent Authority allowed the application of respondents No.1 to 4 and passed eviction order against the petitioner.
 - (3) the judgment and order dated 12th February, 2018 passed by the Additional Commissioner, Kokan Division Mumbai (for short "Commissioner") in Revision No.1222 of 2017. By that order, the Commissioner rejected the Revision Application filed by the petitioner.

Controversy in this Petition relates to Flat No.1102-B, situate on the 11th Floor of the building known as "ORBIT ARYA", Nepean Sea Road, Mumbai.
3. Writ Petition No.2355 of 2018 challenges;

- (i) the judgment and order dated 14th November, 2017 passed by the Competent Authority in an Application filed by the petitioner for leave to defend Application No.113 of 2017. By that order, the Competent Authority rejected the application filed by the petitioner for leave to defend.
- (2) the judgment and order dated 14th November, 2017 passed by the Competent Authority in Application No. 113 of 2017 filed by respondent No.1 u/s 24 of the Act. By that order, the Competent Authority allowed the application filed by the first respondent u/s 24 of the Act and passed eviction order against the petitioner.
- (3) judgment and order dated 12th February, 2018 passed by the Commissioner in Revision Application No.1223 of 2017. By that order, the Commissioner rejected the Revision Application preferred by the petitioner u/s 44 of the Act.

Controversy in this Petition relates to Flat No.1102-A, situate on the 11th Floor of the building known as "ORBIT ARYA", Nepean Sea Road, Mumbai.

4. Since common question of law and facts arise in these Petitions, the same can conveniently be disposed of by this common order. In order to appreciate the controversy between the parties, facts from Writ Petition (ST) No. 5587 of 2015 are taken in to consideration.

5. On 12th June, 2013, leave and licence agreement was executed between

(1) Roshni Yusuf Dewji, (2) Mrs. Afroze Alibhai (3) Mr. Hassanain Dewji and (4) Ms. Shamira Dewji (licensors) on one hand and the petitioner herein on the other. This is registered leave and licence agreement. Under this agreement, the petitioner was inducted as a licensee in respect of residential premises viz: Flat No.1102-B on the 11th floor of the building known as "ORBIT ARYA" Nepean Sea Road, Mumbai, having area of 1350 square feet (Built up, carpet) and one car parking space in the compound of the said building (for short 'suit premises'). The period of the licence was 36 months commencing from 12th June, 2013 and ending on 11th June, 2016.

6. Respondent No.1 filed Case No.114 of 2017 on or about 14th August, 2017 claiming possession of the suit premises, inter alia, contending that the licence expired on 11th June, 2016 and that leave and licence agreement was not renewed thereafter. The petitioner paid licence fee @ Rs. 2,25,000/- per month up to October,2016 and thereafter stopped paying licence fee from November, 2016 onwards. It is the case of the first respondent that security deposit of Rs.12,50,000/- was paid by the petitioner. By letter dated 1st March, 2017 addressed by the first respondent to the petitioner, petitioner was put to notice that security deposit of Rs. 12,50,000/- has been adjusted against balance fees due and payable by the petitioner and called upon the petitioner to hand over vacant and peaceful possession of the suit premises by 31st March,2017.

7. On 3rd October, 2017, respondent No.1 filed application for amendment so as to add names of the proposed applicants as mentioned in Schedule-A. The proposed amendment was to add;

(2) Mrs. Afroze Alibhai

(3) Ms. Shamira Dewji

(4) Mr. Hassnain Y. Dewji as applicants No.2 to 4.

8. The petitioner resisted the application by filing reply dated 1st November, 2017. During pendency of this application, the petitioner filed application on 22nd September, 2017 seeking leave to defend u/s 43 (4) (a) of the Act. On 4th September, 2017, the petitioner filed notes of arguments. Respondent No.1 filed written submissions on 13th November, 2017 opposing leave to defend.

9. By order dated 16th November, 2017, the Competent Authority rejected the application for leave to defend. On the same day, the Competent Authority allowed the application filed by the respondent u/s 24 of the Act. The Competent Authority directed the petitioner to hand over vacant and peaceful possession of the suit premises and further directed the petitioner herein to pay the the respondents herein amount of monthly licence fee from November, 2016 to March, 2017 and double the rate of monthly licence fee i.e Rs. 2,25,000 x 2 = Rs. 4,50,000/- from 1st April, 2017 till vacant possession of the suit premises is delivered to them.

10. Aggrieved by these decisions, the petitioner instituted Revision Application u/s 44 of the Act before the Commissioner which was dismissed on 12th February, 2018. It is against these orders, the petitioner has instituted the present Writ Petitions.

11. In support of this Petition, Mr. Barve has invited my attention to Clauses 7 (c) and 10 of the leave and licence agreement

which read as under:

7(c):“To install the Fit Outs as agreed in the discussion with the Licensee (more particularly described in Annexure C) or or before August, 10, 2013. If the Licensors fail to give the possession of the said Premises along with the said Fit Outs on the date mentioned in this clause 7(c), a penalty shall be raised equivalent to 2.5 times of per day license fee till the possession with the said Fit Outs is granted to the Licensee. The Licensee shall have the right to adjust the said penalty against the license fee of the subsequent months.

10.On expiry or sooner determination of this Agreement, the Licensee shall remove the employees and servants and all the belongings, chattels, articles and things from the said premises and shall vacate and hand over charge of the said Premises to the Licensors. If the Licensee fails to hand over quite and vacant possession of the premises on expiry of this agreement, the Licensee shall be liable to pay Rs. 10,000/- per day from the date of termination of the license, till the time the Licensee vacates with all personal belongings lying in the said Premises. Similarly, if the Licensors fail to refund the security deposit of Rs. 12,50,000 (Rupees Twelve Lacs fifty thousand only) to the Licensee on the expiry of the License or early termination, the Licensee shall continue to occupy the said Premises without paying any compensation and the Licensee shall be entitled to get interest at the rate of 18 (eighteen) per cent per annum from the date of expiry of the license or early termination till date of actual payment. The Licensors shall be jointly and severally responsible for the refund of the interest free security deposit as mentioned hereinabove”.

12. Relying on these clauses, Mr. Barve submitted that though the licensors agreed to install fit outs, they did not install fit outs throughout the period of licence and even after expiry of licence. The licensor also failed to refund the security deposit of Rs. 12,50,000/- to the licensee on the expiry of the licence or it's termination. The petitioner being licensee was, therefore, entitled to

occupy the premises without paying any compensation. Further, he is entitled to get interest @ 18% per annum from the date of expiry of licence or early termination till the date of actual payment.

13. Mr. Barve submitted that application for amendment was made on 3rd October, 2017. Amendment application was allowed on 16th November, 2017. As per the order dated 16th November, 2017, amendment was actually carried out on 28th November, 2017. He submitted that amendment was carried out beyond the prescribed period without obtaining permission of the Competent Authority. That apart, the petitioner was served with amended copy on 30th November, 2017. He has taken me through the grounds raised in the Revision Application filed before the Commissioner to contend that the Competent Authority had anti dated the order as amendment was carried out on 28th November, 2017. Prior to carrying out amendment, the Competent Authority could not have passed order on 16th November, 2017. He further submitted that after the amendment was carried out no opportunity was given to the petitioner to advance arguments before the Competent Authority. He, therefore, submitted that the order of the Competent authority is perverse and is suffering from serious infirmities. The Competent Authority had passed the order on 16th November, 2017 by adopting gross abuse of procedure of law as well as deprived the petitioner from defending the application for ventilating their legitimate rights. He further submitted that on 16th November, 2017, the Competent Authority rejected the application for leave to defend and on the same day, without giving an opportunity of hearing, allowed the application filed by the respondents u/s 24 of the Act.

14. Mr. Barve submitted that the order dated 16th November, 2017 before carrying out amendment in the original application is nothing but gross abuse of process of law and is required to be set aside. He submitted that there is clearcut judicial indiscipline on the part of the Competent Authority to include names of the applicants No. 2 to 4 in the order dated 16th November, 2017 when in fact the amendment was carried out on 28th November, 2017. He further submitted that the petitioner is not in arrears of payment of any licence fee.

15. On the other hand, Mr. Jain has supported the impugned orders. He submitted that while deciding application u/s 24 of the Act, the Competent Authority noted that the petitioner had filed written notes of arguments on 4th October, 2017 and the respondents on 13th November, 2017 which were taken on record and were carefully considered by the Competent Authority. The Competent Authority also heard the parties on the application for amendment to add parties and application for leave to defend. The Competent Authority considered the pleadings, documents and legal submissions put forth by the parties. The Competent Authority had first dealt with an application for amendment for adding applicants No.2 to 4 being co-owners of the suit premises and allowed the application and orally permitted to carry out the amendment forthwith. He submitted that this submission is based on paragraphs 8 to 10 of the order. He, therefore, submitted that it cannot be said that the order dated 16th November, 2017 is anti dated order. He further submitted that the period of licence was for 36 months commencing from 12th June, 2013 and ending on 11th June, 2016. On humanitarian ground, the petitioner was allowed to

occupy the suit premises. The petitioner paid licence fee up to October, 2016 and thereafter did not pay licence fee from November, 2016 onwards. He has taken me through the application for amendment filed by the respondents to contend that the only amendment made to the original application was addition of co-owners. The respondents did not add any pleadings in the original application. He submitted that the Authorities below after considering the merits of the matter had allowed the application made by Respondent No.1 u/s 24 of the Act and rejected the application made by the petitioner for leave to defend. The said order was confirmed by the Commissioner. He, therefore, submitted that no case is made out for invoking powers under Article 226 of the Constitution of India.

16. I have considered the rival submissions made by learned Counsel for the parties. I have also perused the material on record. It is not in dispute that the parties entered into registered leave and licence agreement on 12th June, 2013. The licence agreement was valid for 36 months commencing from 12th June, 2013 and ending on 11th June, 2016. A perusal of the application filed by the respondents shows that the the respondents specifically asserted that the petitioner had paid licence fee up to October, 2016 and stopped paying licence fee from November, 2016. It also shows that by letter dated 1st March, 2017, the licensor informed the petitioner about adjustment of security deposit Rs.12,50,000/- for non payment of licence fee of five months.

17. Mr. Barve submitted that the order was passed by the Competent Authority based on the amendment carried out on 28th

November, 2017. The order is anti dated to 16th November, 2017. I do not find any merit in this submission. In the first place, no such ground was raised before the Commissioner in Revision Application. Secondly, as noted earlier, the Competent Authority had, after hearing both the sides, first decided the application for amendment and allowed the licensor to carry out the amendment forthwith. The Competent Authority was therefore, justified in proceeding on the footing that the respondents had carried out amendment. It, therefore, cannot be said that the order is anti dated. Equally, it cannot not be accepted that after amendment was carried out on 28th November, 2017, the petitioner was deprived of opportunity of hearing.

18. A perusal of the paragraphs 8 to 10 of the order clearly shows that the Competent Authority considered the written note of arguments filed by the parties and they were carefully considered. The Competent Authority heard the parties on the application for amendment to add necessary parties and application for leave to defend. The Competent Authority considered the pleadings, documents, and legal submission put forth by the parties. It, therefore, cannot be said that the petitioner was not given an opportunity of hearing before the Competent Authority.

19. The Competent Authority had decided the application of leave to defend on 16th November, 2017. A perusal of the order shows that the Competent Authority has considered that the leave and licence agreement between the parties is for 36 months, licence period has expired and, therefore, declined to grant leave to defend as no triable issues were made out. Having regard to the fact that

proceeding before the Competent Authority are summary in nature, once leave to defend is rejected in terms of Section 43(4) (a), the statements made by the landlord in the application for eviction are deemed to be admitted by the licensee and the landlord/applicant is entitled to order of eviction on the grounds mentioned therein. For the reasons stated in paragraph 14 to 19, I do not find that the Competent Authority committed any error in allowing the application filed by respondents u/s 24 of the Act and rejecting the application filed by the petitioner for leave to defend before the Competent Authority.

20. The petitioner instituted Revision Application before the Commissioner which was also rejected on 12th February, 2018. Thus, the Authorities below have concurrently found that no case is made out for grant of leave to defend as also licensor/respondent is entitled to possession of the suit premises.

21. The Competent Authority while allowing the application u/s 24 of Act had directed the petitioner herein to pay arrears of monthly license fees. Clause 3 of the operative part of the order of the Competent Authority reads thus:

“The Respondent is hereby directed to pay to the Applicants, arrears of monthly Licence fees from November 2016 to March 2017 and double the rate of monthly License fees i.e Rs. 2,25,000 x2=Rs. 4,50,000/- from 01/04/2017 till vacant possession of the said Application Premises is delivered to Applicants”.

22. As noted earlier, licensor/respondents have specifically made out a case that they have made adjustment of Rs.12,50,000/

of security deposit for non payment of 5 months license fee from November, 2016 onwards. However, Competent Authority had directed the petitioner to pay license fees from November, 2016 to March, 2017 @ Rs. 2,25,000/-. In my opinion, the Competent Authority ought to have given credit of Rs. 12,50,000/- in clause 3 of the operative order. In view thereof, clause (3) extracted hereinabove stands modified in both cases in the following terms:

“The Respondent is hereby directed to pay to the Applicants, arrears of monthly Licence fees from November 2016 to March 2017 and double the rate of monthly License fees i.e Rs. 2,25,000 x2=Rs. 4,50,000/- from 01/04/2017 till vacant possession of the said Application Premises is delivered to Applicants subject to giving credit of Rs.12,50,000/-”.

Hence, the Petitions are disposed of in the following terms.

- [1] The orders of the Competent Authority stand modified in the aforesaid terms.
- [2] Orders of eviction passed by the Competent Authority and confirmed by the Commissioner are upheld.
- [3] Rule is partly made absolute in the aforesaid terms with no order as to costs.

23. At this stage, Mr. Barve orally applies for stay of this order for a period of 3 weeks from today. He assures that on or before 15th March, 2018, the petitioner will pay Rs. 6,75,000/- each to the Respondent No.1 in Writ Petition No. 2355 of 2018 and respondents No.1 to 4 in Writ Petition (ST) No.5587 of 2018.

24. In view thereof, notwithstanding dismissal of the

Petitions, subject to the petitioner paying Rs. 13,50,000/- (Rs.6,75,000/- each) on or before 15th March, 2018 to the respondent No.1 in Writ Petition No.2355 of 2018 and respondents No.1 to 4 in Writ Petition (ST) No.5587 of 2018. This order shall remain stayed for a period of three weeks from today. Order accordingly.

[R.G. KETKAR, J.]