

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 3960 OF 2018

Sayyed Mohamed Ali

...Petitioner

Versus

Kumar Mathradas Mathani

And Anr.

...Respondents

....

Mr. Vijay Patil i/b. Sachin K. Hande, Advocate for the Petitioner.

Mr. R.V. Govilkar a/w. Shabo N. Khan i/b. Govilkar & Asso., for Respondent No.1.

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CORAM : R. G. KETKAR, J.

DATE : 12th APRIL, 2018

PC.

1. Heard Mr.Vijay Patil, learned counsel for the petitioner and Mr.R.V. Govilkar, learned counsel for respondent No.1, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 12.12.2017 (first order) as also the judgment and order dated 12.12.2017 (second order) passed by the Competent Authority (Rent Act) Konkan Division, Mumbai (for short, 'Competent Authority') as also the judgment and order dated 26.3.2018 passed by the Additional Commissioner, Konkan Division, Mumbai (for short, 'Commissioner') in Revision Application No.77/2018. By the first order dated 12.12.2017, the Competent

Authority rejected the application made by the petitioner for leave to contest the application No.79/2016 filed by respondent No.1 under Section 24 of the Maharashtra Rent Control Act, 1999 (for short, 'Act'). By the second order dated 12.12.2017, the Competent Authority allowed the application made by the first respondent under Section 24 of the Act and directed the petitioner herein to hand over vacant and peaceful possession of the flat, namely, Flat No.201, Building No.32, Seawood Estate Ltd., NRI Complex, Sector 54, 56, 58, Nerul, Navi Mumbai – 400 706 (for short, 'suit premises'). The Competent Authority further directed the petitioner herein to pay to the first respondent double the rate of monthly license fees i.e. Rs.18,000/- X 2 = Rs.36,000/- from the date of expiry of leave and licence agreement i.e. from 15.3.2016 till the date of handing over vacant possession of the suit premises to the first respondent.

3. Aggrieved by this decision, the petitioner instituted Revision before the Commissioner under Section 44 of the Act. By order dated 26.3.2018, the Commissioner has rejected the Revision. It is against these orders, the petitioner has instituted present Petition. The relevant and material facts giving rise to filing of this Petition, briefly stated, are as under.

4. The petitioner was inducted in the suit premises in the year 2003. The leave and licence agreement was executed on 15.4.2015 for a period of 11 months commencing from 15.4.2015 and ending on 13.3.2016 on the monthly compensation of Rs.18,000/- and interest free security deposit of Rs.1,10,000/-. Respondent No.1 issued termination notice dated 1.12.2015 calling upon him to hand over the premises on or before 15.1.2016. On 14.3.2016, respondent No.1 called upon the petitioner to vacate the premises but the petitioner refused to vacate. Respondent No.1 issued notices dated 3.6.2016 and 17.6.2016. As the petitioner failed to vacate and continued to occupy the suit premises, the proceedings under Section 24 of the Act were initiated.

5. The petitioner filed application for leave to contest, which was rejected by the Competent Authority by the first order dated 12.12.2017 and on the same day by second order, the application under Section 24 of the Act was allowed.

6. Mr. Patil submitted that in the leave and licence agreement dated 15.4.2015 there is no reference to the earlier agreements of leave and licence executed between the parties. In fact respondent No.1 has agreed to sell the suit premises to the petitioner. He invited my

attention to the agreement for sale dated 30.10.2014 entered into and between the petitioner on one hand and the first respondent on the other. Respondent No.1 had agreed to sell the suit premises for a total consideration of Rs.1,40,00,000/-. As respondent No.1 has not executed the conveyance deed, the petitioner has instituted Special Civil Suit No.139/2016 in the Court of Civil Judge, Senior Division, Thane for declaration of ownership and for specific performance of agreement. In pursuance of the agreements of sale, the petitioner has paid Rs.10,50,000/- in cash and diamond worth 5.5 carat affixed in the finger-ring worth Rs.1,30,00,000/- and above in the Indian jewellery market was agreed to be sold by him to the respondent and to pay sale-proceeds towards the consideration of the remaining amount of said flat. He submitted that the suit is still pending. He submitted that the Courts below were not justified in rejecting the application for leave to contest as the petitioner has raised triable issues. He, therefore, submitted that the Petition requires consideration and interim relief prayed for by the petitioner deserves to be granted.

7. On the other hand, Mr. Govilkar supported the impugned orders. He submitted that it is not in dispute that registered leave and licence agreement was executed between the parties on 15.4.2015. He relied upon explanation (b) to Section 24, Section 55 and Section 43(4)

(a) of the Act. He submitted that in view of these provisions, it cannot be said that the petitioner has raised triable issues. Once leave to contest is rejected, the consequences under Section 43(4)(a) of the Act follow. He, therefore, submitted that no case is made out for interfering with the impugned order.

8. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. It is not in dispute that on 15.4.2015, registered leave and licence agreement was executed between the parties for the period of 11 months commencing from 15.4.2015 and ending on 14.2.2016. Clause (3) of the leave and licence agreement recites that the petitioner has taken the suit premises for the purpose of residential only. Explanation (b) to Section 24, Section 55(2) and Section 43(4)(a) of the Act read 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.”

“55.Tenancy agreement to be compulsorily registered.--

(1) xxxx

(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.”

“43. Special procedure for disposal of application.-

(1) xxxx

(2) xxxx

(3) xxxx

(4) (a) The tenant or licensee on whom the summons is duly served in the ordinary 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.”

9. 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. In the present case admittedly leave and licence agreement is in writing and is a registered instrument. In view thereof, explanation (b) to Section 24 is applicable in the present case. The petitioner cannot rely upon Section 55(2) of the Act.

10. Section 43(4)(a) of the Act lays down that the tenant or licensee on whom the summons is duly served 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 grounds stated.**

[Emphasis supplied]

11. While rejecting the application for leave to contest, the Competent Authority has referred to the fact that registered leave and licence agreement was executed between the parties on 15.4.2015 and the contention of the petitioner that he is in occupation of the suit premises under leave and licence agreement and that respondent No.1 had agreed to sell in his favour for consideration of Rs.1,40,00,000/- and out of which he has paid Rs.10,00,000/- in cash on 31.10.2014 and a diamond worth Rs.1,30,00,000/- was handed over by him in consideration of the sale amount to respondent No.1's Constituted Attorney, who has executed the receipt in that behalf were considered. The Competent Authority recorded a finding that the petitioner herein failed to produce any documents as regards handing over of the diamonds to the first respondent. The Competent Authority also referred to filing of the suit by the petitioner for declaration and specific performance of the contract.

12. Even otherwise, Section 54 of the Transfer of Property Act, 1882 defines the expression 'contract for sale', which reads thus :

“54. xxxxx

xxxxxx

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.”

13. A perusal of the above definition of 'contract for sale' does not, of itself, create any interest in or charge on such property and at the highest gives rise to the purchaser to institute suit for specific performance. In view thereof, I do not find that the Competent Authority committed any error in rejecting the leave to contest the application filed by respondent No.1 under Section 24 of the Act. Once the leave to contest application is rejected, the consequences provided under Section 43(4)(a) of the Act follow. In view thereof, I do not find that the Competent Authority committed any error in passing the second order dated 12.12.2017. Resultantly I do not find that the Commissioner committed any error in rejecting the Revision Application. Hence, no case is made out for invocation of powers under Article 227 of the Constitution of India. Petition fails and the same is dismissed.

14. At this stage, Mr. Patil orally applies for stay of this order for a period of twelve weeks from today. Mr. Patil states that the petitioner is in possession of the suit premises and he has neither created third party interest nor parted with the possession. He will hereafter neither create third party interest nor part with the possession. He further states that the petitioner and all adult family members residing with him are ready and willing to give usual undertaking within two weeks from today with

copy in advance to the other side. Learned Counsel for respondent No.1 opposes said prayer.

15. Having regard to the fact that petitioner desires to challenge this order before the Apex Court, in my opinion, ends of justice would be met by staying operation of this order for a period of twelve weeks from today subject to the petitioner and all adult members residing with him giving usual undertaking to this Court within two weeks from today, with copy in advance to other side, incorporating therein:

- (i) that they are in actual possession of the suit premises and nobody else is in possession;
- (ii) that they have so far neither created third party interest nor parted with the possession of the suit premises;
- (iii) that they will hereafter neither create third party interest nor part with the possession of the suit premises;
- (iv) that they will pay the arrears of compensation, if any, to respondent No.1 within two weeks from today; and
- (v) that in case the petitioner is unable to obtain suitable orders within twelve weeks from today from the higher Court, they will deliver vacant and peaceful possession of the suit premises to respondent No.1.

16. In view thereof, notwithstanding dismissal of Writ Petition, the petitioner shall not be dispossessed from the suit premises for a period of twelve weeks from today, subject to the petitioner filing undertaking in the aforesaid terms, with copy in advance to the other

side as also paying arrears of compensation, if any, within two weeks from today. In case the petitioner does not file undertaking in the above terms and/or arrears of compensation are not paid within two weeks from today, the interim order shall stand vacated without further reference to the Court. It is also made clear that in the event of the petitioner not obtaining suitable orders from the higher Court within twelve weeks from today and not handing over possession of the suit premises to the first respondent, the first respondent will be at liberty to adopt appropriate proceedings. List the Petition for reporting compliance after three weeks. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)