

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO. 4312 OF 2018**

Ms. Annu D/o Varanmal Bijlani] Petitioner

Vs.

Ameet Kanchan Prasad Londhe & Ors.] Respondents

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Mr. Dilip L. Aswani i/b K.S. Khedekar, for petitioner.

Mr. Ajay Nandgaonkar i/b Mr. P.V. Karkhanis, for Respondents.

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CORAM : R.G. KETKAR, J.

DATE : 11TH APRIL, 2018.

P.C.

Heard Mr. Aswani, learned Counsel for the petitioner and Mr. Nandgaonkar, learned Counsel for the respondents at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has prayed for Writ of Mandamus directing the respondents No.1, 2 and 3 to restore and hand over possession of Flat No.5 on the first floor in the Kanchan Chhaya Building on Plot No.18, Shiv Ganga Nagar, Ambernath (East), Dist. Thane (for short 'suit premises') to the petitioner.

3. In support of this Petition, Mr. Aswani submitted that respondents No.1 and 2 instituted proceedings under section 24 of the Maharashtra Rent Control Act, 1999 (for short 'Act') in the year 2016 by filing Application No.110 of 2016. By order dated 4th December, 2017, the Competent Authority (Rent Act) Kankan Division, Mumbai (for short 'Competent Authority') allowed the

application on the ground that the petitioner herein did not obtain leave to contest the proceedings as contemplated by Section 43(4) (a) of the Act and in view of the decision of the Apex Court in the case of **Prakash Jain Vs. Marie Fernandes, 2003 (8) SCC 431**, the Competent Authority has no power to condone delay.

4. Aggrieved by this decision, the petitioner preferred Revision Application u/s 44 of the Act before the Additional Commissioner, Kokan Division, Mumbai (for short 'Commissioner') on 12th January, 2018. On 29th January, 2018, the Commissioner after hearing oral arguments of the petitioner stayed the order passed by the Competent Authority dated 4th December, 2017 subject to depositing Rs. 15,000/- within 10 days in the Office of the Competent Authority and fixed the next date of hearing 8th March, 2018. He submitted that in fact, the order was not passed on 29th January, 2018 and only after hearing the oral arguments, matter was adjourned to 8th March, 2018. On 8th March, 2018, the petitioner filed application contending, inter alia, that though the order was passed on 29th January, 2018, the petitioner came to know about the same only on 8th March, 2018. He submitted that the petitioner has shown readiness and willingness to deposit the amount in the time stipulated in the order. He submitted that the matter was kept on 22nd March, 2018. However, on 22nd March, 2018, the Competent Authority was not available and the next date was given 29th March, 2018. In the meantime, on 27th March, 2018, notice of 24 hours was issued to the petitioner for vacating the suit premises. On 4th April, 2018, the petitioner was dispossessed and possession was handed over to respondents No.1 and 2 at 11.40 a.m. Accordingly, possession receipt was also executed. He submitted that basically order of the Competent Authority did not attain finality and in view of section 45 of the Act, the Competent Authority was not justified in issuing warrant of possession and executing warrant of possession. He relied on decision of this

Court in **AMI Merchandising Pvt. Ltd. Vs. State of Maharashtra & Ors.2014 (3) Mh. L.J.257** and in particular paragraphs 51 to 54 thereof to contend that the action of the Competent Authority in issuing warrant of possession and respondents No.1 and 2 in obtaining possession is contrary to Section 45 of the Act. He, therefore, submitted that respondents No.1 and 2 may be directed to restore possession of the suit premises to the petitioner. In case, the Court is not inclined to order restoration of possession, articles and other belongings lying in the suit premises may be allowed to be collected.

5. On the other hand, Mr. Nandgaonkar submitted that the petitioner did not obtain leave to contest the application within 30 days from the receipt of the summons. In view thereof, the statements made by respondents No.1 and 2 in the application for eviction are deemed to be admitted and respondents No.1 and 2 are entitled to order of eviction on this ground. He submitted that by order dated 29th January, 2018, the Commissioner stayed order passed by the Competent Authority subject to the petitioner depositing Rs. 15,000/- within 10 days. The petitioner did not comply that order. Therefore, no fault can be found in respondents No.1 and 2 taking possession of the suit premises.

6. I have considered rival submissions of learned Counsel for the parties. I have also perused the material on record. It is not in dispute that the petitioner has not obtained leave to contest the application filed by respondents No.1 and 2 under section 24 of the Act. In view thereof, the Competent Authority allowed the application and directed the petitioner to hand over possession of the suit premises. The Competent Authority directed the petitioner to pay a double the rate of monthly licence fees i.e Rs. 6,500 x 2=13,000/- from 15th February, 2015 till vacant possession of the suit premises is delivered to the applicant.

7. Aggrieved by this decision, the petitioner preferred revision application on 29th January, 2018. The Commissioner granted stay and fixed the matter for further hearing on 8th March, 2018. The stay was conditional and required the petitioner to deposit Rs. 15,000/- within 10 days in the Office of the Competent Authority. It is not in dispute that the petitioner did not comply the condition imposed by the Commissioner. Mr. Aswani submitted that the petitioner was not aware of passing order on 29th January, 2018 and came to know only on 8th March, 2018. It is not possible to accept his submission at all. In view thereof, I do not find any error committed by the Competent Authority in issuing warrant of possession and handing over possession to respondents No.1 and 2.

8. Mr. Nandgaonkar submitted that at the time of preferring possession receipt, inventory of articles was made and the articles are lying in the adjacent Flat No.3 and the said flat is sealed. Mr. Aswani disputes this position. It is not possible for this Court to go into this aspect. As the petitioner did not obtain leave to contest the application, it is not possible to order restoration of possession of the suit premises. It is informed that the Commissioner has fixed the matter on 19th April, 2018. However, interest of the petitioner can be protected by directing the Commissioner to decide the revision application within two weeks from today. The Commissioner is requested to decide the Revision Application by one week from 19th April, 2018. In the meantime, respondents No.1 and 2 shall neither create third party interest nor part with possession of the suit premises. Subject to above directions, Petition is disposed of.

[R.G. KETKAR, J.]