

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 4794 OF 2018

Mrs. Farida Amin Tharani

...Petitioner

Versus

Mrs. Asma Begum Mohammed Siddique
Shaikh And Anr.

...Respondents

....

Mr. R.S. Apte, Senior Advocate a/w. Rakesh Kumar a/w. Aishwarya Hadkar
a/w. Rounish Pandey i/b. M/s. Legal Vision, for the Petitioner.

Mr. G.S. Godbole, Senior Advocate a/w. Jui Kanade i/b. Nikita Jacob & Ms.
Shivani Samel, Advocate for Respondent No.1.

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CORAM : R. G. KETKAR, J.

RESERVED ON : 23th JULY, 2018

PRONOUNCED ON : 07th AUGUST, 2018

ORDER :

1. Heard Mr.R.S. Apte, learned Senior Counsel for the petitioner and Mr. G.S. Godbole, learned Senior Counsel for respondent No.1, at length.
2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged (i) the judgment and order dated 27.10.2017 passed by the Competent Authority (Rent Act), Konkan Division, Mumbai (for short, 'Competent Authority') in Application No.60/2010 as also (ii) the judgment and order dated 20.3.2018 passed by the Additional

Commissioner, Konkan Division, Mumbai (for short, 'Commissioner') in Revision No.1091/2017. By order dated 27.10.2017, the Competent Authority returned the application filed by the petitioner under Section 24 of the Maharashtra Rent Control Act, 1999 (for short, 'Maharashtra Rent Act') for presentation to proper forum. The petitioner filed application under Section 24 of the Maharashtra Rent Act for recovery of possession of a duplex flat i.e. flat No.501 on the 5th floor & flat No.601 on the 6th floor of a building known as "Amen Apartment" at 2, Church Road, Marol Village, Andheri (East), Mumbai – 400 059 (for short, 'suit premises'). The Competent Authority held that it cannot entertain application filed by the petitioner as the petitioner herein is not a landlady for the purposes of Section 24 of the Maharashtra Rent Act. As regards deposit of compensation amount of Rs.40,15,000/- and society charges of Rs.1,76,400/- made by the first respondent herein is concerned in obedience to the order dated 6.12.2016 passed by this Court in C.R.A. No.909/2014, the parties were given liberty to pray for appropriate orders from this Court or approach such appropriate forum as may be advised.

3. By order dated 20.3.2018, the Commissioner dismissed the revision application filed by the petitioner under Section 44 of the Maharashtra Rent Act thereby upholding the order of the Competent Authority dated 27.10.2017.

4. Rule. Learned Counsel for respective respondents waive service. Having regard to the narrow controversy raised in this Petition as also at the request and by consent of the parties, Rule is made returnable forthwith and the petition is taken up for final hearing.

5. In support of this Petition, Mr. Apte submitted that respondent No.1 admitted execution of the leave and licence agreement between the petitioner and respondent No.1 on 17.2.2005. He submitted that in the written statement, respondent No.1 admitted execution of leave and licence agreement. In paragraph-1, respondent No.1 contended that in the leave and licence agreement entered into between the parties on 17.2.2005, there is no clause of compensation. Clause-12 of the agreement is only as regards the deposit amount. Clause-20 recites that the deposit amount will be refunded without any interest. In paragraph-3 of the written statement, respondent No.1 contended that there is a separate agreement for sale entered between the petitioner and the first respondent for an amount of Rs.95 Lakhs which was not registered and copy of the agreement for sale is not handed over to the first respondent by the petitioner. The petitioner is not producing the same as it was entered into between the parties in 2006 after expiry of a period of leave and licence. In paragraph-4 of the written statement, respondent No.1 contended that the leave and licence agreement which was enclosed to the plaint (the proceedings under Section 24 of the

Maharashtra Rent Act) has never been acted upon because it is already agreed between the parties that the premises in question are purchased by the first respondent. The agreement of leave and licence is mere understanding between themselves and was never intended to be acted upon.

6. In paragraph-6 of the written statement, the first respondent reiterated that the agreement which was entered into between the parties has never been acted upon which was sheer understanding between themselves and it was agreed between themselves to purchase the suit premises at agreed amount and the agreement for sale will be entered into after litigation which was pending before the High Court is over. The petitioner is taking undue advantage of the said agreement filed in the present proceedings against the first respondent. In paragraph-7, first respondent reiterated that the agreement of leave and licence was never acted upon as agreed between themselves nor renewed because it was agreed between themselves to purchase the suit premises within 11 months and as per the agreed amount which was paid by her to the petitioner.

7. Mr. Apte submitted that in paragraph-1 of the plaint in S.C. Suit No.1703/2013 instituted by the first respondent against the petitioner herein in the Bombay City Civil Court at Dindoshi, Goregaon, the first respondent admitted that the petitioner is the owner of the suit premises.

8. Mr. Apte submitted that in paragraph-1 of the affidavit in lieu of examination-in-chief of the first respondent, she reiterated each and every statement, contention and averment made by her in the written statement. In paragraph-3, she stated that the purported leave and licence agreement dated 17.2.2005 is a fictitious document which is also insufficiently stamped and not registered. Said agreement is purportedly for a period of 11 months that expired sometime in January, 2006. No steps were taken by the petitioner to renew said agreement till issuance of the purported eviction notice in the year 2010. In paragraph-6, respondent No.1 stated that in order to provide certain documentary evidence in support of her possession and rights over the suit premises, the leave and licence agreement was entered into.

9. Mr. Apte submitted that respondent No.1 came with the case of oral agreement between the parties requiring her to make payment of Rs.60 Lakhs by cheque and further sum of Rs.35 Lakhs by cash. He invited my attention to question No.23 and answer given by the first respondent, which is to the following effect :

Question	23	Is is correct to say that possession of the suit premises is given to you (first respondent) in pursuance of the leave and licence agreement dated 17.2.2005 ?
Answer		Yes.

10. Mr. Apte, therefore, submitted that the first respondent admitted execution of the leave and licence agreement between the parties on 17.2.2005 and that she was put in possession of the suit premises in pursuance of the leave and licence agreement. He submitted that the Authorities below returned the application filed under Section 24 of the Maharashtra Rent Act on the ground that the petitioner is not a landlady for the purposes of that Section and, therefore, the Competent Authority cannot entertain and try the application. He submitted that the Competent Authority failed to consider explanation (b) to Section 24 of the Maharashtra Rent Act which lays down that an agreement of licence in writing is conclusive evidence of the fact stated therein. As in the present case the agreement of leave and licence is in writing which records that the petitioner is a licensor and the first respondent is a licensee, no other evidence is admissible.

11. Mr. Apte submitted that the Competent Authority did not frame any issue as regards payment of licence fee by the first respondent to the petitioner herein. He invited my attention to the affidavit of evidence submitted by the petitioner and in particular paragraphs-8 and 9. In paragraph-8, the petitioner stated that respondent No.1 requested that the deposit amount of Rs.10 Lakhs may be adjusted towards the compensation fees @ Rs.85,000/- per month from 17.2.2005 and accordingly the

subsequent payment made by the first respondent intermittently may be adjusted towards compensation fees for subsequent period. Since the relationship between the parties was cordial, the first respondent continued to pay the said amount of compensation fees @ Rs.85,000/- per month by paying lump sum amounts intermittently and continued to use and occupy the suit premises even after expiry of the period of said leave and licence agreement dated 17.2.2005.

12. He submitted that in paragraph-9, the petitioner stated that including the amount of security deposit of Rs.10 Lakhs under leave and licence agreement dated 17.2.2005, the first respondent has paid total sum of Rs.53 Lakhs towards the monthly compensation fees / license fees of the suit premises, details whereof were set out therein.

13. Mr. Apte invited my attention to questions No.11 and 19 put to the petitioner during her cross-examination and the answers given by her, which are to the following effect :

Question	11	Is it correct to say that there is no monthly rent payable by the respondent under the terms and conditions of the above leave and license agreement ?
Answer		Yes, there is no rent but there is monthly compensation or license fee for the period of 11 months, and thereafter the security deposit was adjusted towards the compensation and she used to pay me intermittently lumpsum amounts.
Question	19	Is it correct to say that you were receiving the license fee during this period of the making of above complaints ?
Answer		Yes.

14. Thus the answers given by the petitioner to the above questions clearly substantiates the case of the petitioner that the licence fee was adjusted from the security deposit of Rs.10 Lakhs and thus this is not a case of gratuitous licensee. He submitted that even in paragraph-4 of the application filed by the petitioner under Section 24 of the Maharashtra Rent Act, the petitioner specifically asserted that initially deposit of Rs.10 Lakhs was adjusted from the monthly compensation fees @ Rs.85,000/- per month. He submitted that the petitioner had issued notice dated 1.6.2010 to the first respondent. In that notice also the petitioner claimed that the security deposit of Rs.10 Lakhs was adjusted towards the monthly licence fee of Rs.85,000/-. For all these reasons, he submitted that the impugned orders are liable to be set aside thereby allowing the application filed by the petitioner under Section 24 of the Maharashtra Rent Act.

15. On the other hand, Mr. Godbole supported the impugned orders. He invited my attention to the definition of expression 'licensee' under Section 7(5) of the Maharashtra Rent Act. Section 7(5) defines the expression "licensee" to mean a person who is in occupation of the premises or such part, as the case may be, under a subsisting agreement for licence given for a licence fee or charge
 and that the expressions "licence", "licensor" and "premises given on licence" are required to be

construed in the light of the definition of “licensee” in Section 7(5) of the Maharashtra Rent Act. He submitted that Section 24(1) of the Maharashtra Rent Act lays down that notwithstanding anything contained in the Act, a licensee in possession or occupation of premises given to him on licence for residence has to deliver possession of the suit premises to the landlord on expiry of the period of licence; and on the failure of the licensee to so deliver the possession of the licensed premises, the landlord is entitled to recover possession of the suit premises supported by making application to the Competent Authority and the Competent Authority on being satisfied that the period of licence has expired has to pass an order for eviction of the licensee. He submitted that the 'licensee' contemplated in Section 24(1) is the one defined in Section 7(5) of the Maharashtra Rent Act. The expression 'licence' has to be also interpreted in the light of the definition of the 'licensee' in Section 7(5) of the Maharashtra Rent Act. In other words, the 'licensee' contemplated under Section 7(5) of the Maharashtra Rent Act read with Section 24(1) of the Maharashtra Rent Act does not contemplate a gratuitous licensee. He submitted that if the gratuitous licensee is also included in Section 24(1), sub-section (2) thereof which lays down that 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 is liable

to pay damages at double the rate of the licence fee or charge of the premises fixed under the agreement of licence, will be rendered otiose. He submitted that unless a licensee is inducted in the premises given for licence fee or charge, Section 24 of the Maharashtra Rent Act cannot be invoked by the licensor against a gratuitous licensee.

16. Mr. Godbole submitted that in view of Section 7(5) of the Maharashtra Rent Act, which defines the expression “licensee” the expressions “licence”, “licensor” and “premises given on licence” are to be construed. One cannot resort to the definition of the expression “license” in Section 52 of the Indian Easements Act, 1882 (for short, 'Easements Act'). Section 52 of the Easements Act does not require any consideration, material or non-material to be an element of the definition of the “licence”. Under Section 52 of the Easements Act, payment of licence fees is not an essential attribute for subsistence of licence. The Presidency Small Cause Courts Act, 1882 (for short, 'P.S.C.C. Act') does not define the expression “licensor” and “licensee” though these expressions find a place in Section 41(1) of that Act. He submitted that the licence under Section 7(5) of the Maharashtra Rent Act must be a licence which is supported by material consideration. In other words, a gratuitous licensee is not covered under the definition of “licensee” in Section 7(5) of the Maharashtra Rent Act. He, therefore, submitted that basically Section 24 itself is not applicable in

the facts and circumstances of the present case. If that be so, the petitioner cannot contend that as per explanation (b) to Section 24 of the Maharashtra Rent Act an agreement in writing is conclusive evidence of the fact stated therein.

17. Mr. Godbole invited my attention to clauses-3 & 12 of the leave and licence agreement. He submitted that clause-3 of the agreement specifically recites that there is no monthly compensation mutually agreed by the licensor and licensee. Clause-12 recites that the licensee has to deposit a sum of Rs.10 Lakhs with the licensor as security deposit free of interest which will be returned to the licensee on expiry of the agreement or on notice of one month in advance for vacation of premises and against vacant and peaceful possession of the said premises after deducting the cost of the damages if any to the fixtures / fittings and outstanding electricity bills, telephone bills if any.

18. In support of his submissions, Mr. Godbole relied upon following decisions

- (i) **Prabhudas Damodar Kotecha and another vs. Manharbala Jeram Damodar and others, 2007 (5) Mh.L.J. 341 [Full Bench];**
- (ii) **Viraf G. Ichhaporia vs. Mancherji Jamshedji Cama & others, 2010 (6) Mh.L.J. 389;**

19. 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 petitioner has instituted proceedings under Section 24 of the Maharashtra Rent Act on the ground that she had executed leave and licence agreement dated 17.2.2005 in favour of the first respondent for a period of 11 months from 17.2.2005 till 16.1.2016. In order to appreciate the rival submissions, it is necessary to refer to clauses (3) and (12) of the leave and licence agreement, which read thus:

“3) There is no monthly compensation mutually agreed by Licensor & Licensee.

12) The Licensee shall deposit with the Licensors on or before execution of this Agreement, a sum of Rs.10,00,000/- (Rupees Ten Lakhs Only) as Security Deposit, free of interest, which will be returned to the Licensee on the expiry of this agreement or on notice of one month in advance for vacation of premises and against vacant and peaceful possession of the said premises after deducting the cost of the damages if any, to the fixtures/fittings and outstanding electricity bills, telephone bills if any.”

20. A perusal of clause (3), extracted hereinabove, unequivocally shows that the parties mutually agreed that there will be no monthly compensation. Clause (12) shows that respondent No.1 has deposited with the petitioner an amount of Rs.10 Lakhs as security deposit, free of interest, which will be returned to her on expiry of the agreement or on notice of one

month in advance for vacation of premises and against vacant and peaceful possession of the suit premises after deducting the cost of the damages if any, to the fixtures/fittings and outstanding electricity bills, telephone bills if any.

21. Mr. Apte submitted that the very fact that the security deposit accrues no interest indicates that interest on the security deposit of Rs.10 Lakhs is as and by way of licence fee or charge. In any case he submitted that from the material on record it is evident that monthly compensation of Rs.85,000/- was agreed to be adjusted from the security deposit of Rs.10 Lakhs. I do not find any merit in any of the submissions. A conjoint reading of clauses (3) and (12) of the leave and liece agreement leaves no room for doubt that the parties mutually agreed not to charge monthly compensation. Respondent No.1 had deposited Rs.10 Lakhs as and by way of security deposit which was refundable. It may be that said deposit was free of interest. However, that does not by itself mean that the interest component was treated by the parties as licence fee or charge. This will be clearly contrary to clause (3). Amount of Rs.10 Lakhs was refundable on the expiry of the agreement or on notice of one month in advance for vacation of premises and against vacant and peaceful possession of the suit premises after deducting the cost of the damages if any, to the fixtures/fittings and outstanding electricity bills, telephone bills if any. In my opinion clause

(12) cannot be construed to mean that respondent No.1 was liable to pay monthly compensation in the form of interest on security deposit of Rs.10 Lakhs. Mr. Apte relied upon clause (20) of the agreement which is to the following effect and in particular gave emphasis on the words **“after paying the compensation for the month unused.”**

“20) It is also agreed between the Licensor and the Licensee that in the event of the Licensee desires to vacate the said premises before the expiry the Licensors shall allow the Licensee to vacate **after paying the compensation for the month unused.** And at the same time the Licensors shall forthwith refund the deposit of Rs.10,00,000/- (Rupees Ten Lakhs only). However the Licensee shall give one month's notice of its intention to vacate the premises earlier.”

(emphasis supplied)

22. I do not find any merit in this submission as basically the monthly compensation itself is not fixed in the agreement which is consistent with clause (3), extracted hereinabove. In any case Mr. Apte submitted that the very fact that Rs.10 Lakhs was deposited by the first respondent as security deposit that itself amounts to charge and, therefore, respondent No.1 cannot claim to be a gratuitous licensee. I do not find any merit in this submission as well. In short, it has to be held that respondent No.1 was permitted to occupy the suit premises without payment of any licence fee or charge. This is also to be appreciated on the backdrop of the fact that respondent No.1 has come with the case that the suit premises was agreed to be sold to her

for a total consideration of Rs.95 Lakhs out of which the sum of Rs.60 Lakhs was paid by way of cheque and the sum of Rs.35 Lakhs was paid by way of cash. If the contention of Mr. Apte that the suit premises is given on licence for licence fee or charge is accepted that will nullify clause (3) of the leave and licence agreement. It is settled principle of construction that the clauses of the agreement are required to be read as a whole and construction should be placed on the clauses of the Act so as not to render any clause otiose.

23. It is also necessary to consider the provisions of the Maharashtra Rent Act. Section 7(5) thereof defines the expression "licensee". The relevant portion so far as deciding the controversy raised in this Petition is concerned, reads thus :

"7. Definitions.-- In this Act, unless there is anything repugnant to the subject or context,--

(5) "Licensee", in respect of any premises or any part thereof, means the person who is in occupation of the premises or such part, as the case may be, under a subsisting agreement for licence given for a licence fee or charge;
;
 and the expressions "licence", "licensor" and "premises given on licence" shall be construed accordingly;"

24. A perusal of above provision shows that Section 7(5) lays down that "licensee" means the person who is in occupation of the premises or such part, as the case may be, under a subsisting agreement for licence given for a licence fee or charge, but, does not include a gratuitous licensee. The

expressions “licence”, “licensor” and “premises given on licence” are required to be construed accordingly.

25. Section 52 of the Easements Act reads thus :

“52. “License” defined.-- Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a license.”

26. A perusal of the above definition shows that where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a license.

27. In the case of **Prabhudas Kotecha** (supra), the Full Bench of this Court has considered the provisions of Section 5(4-A) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short, 'Bombay Rent Act'). Section 5(4-A) of the Bombay Rent Act is *pari materia* with Section 7(5) of the Maharashtra Rent Act. In paragraph-42, the Full Bench considered Section 41 of the P.S.C.C. Act, Section 5(4-A) of the Bombay Rent Act and Section 52 of the Easements Act and observed that a mere look at the provisions of Sections 5(4-A) of the Bombay Rent Act and Section 52

of the Easements Act would show that Section 5(4-A) clearly provides that the licensee means a person who is in occupation of the premises or such part as the case may be, under a subsisting agreement for licence given for a licence fee or charge. The definition of “licensee” under Section 5(4-A) is very exhaustive and is inclusive and exclusive in character. However, it would suffice to note that the licensee under Section 5(4-A) must be a licensee whose licence is supported by material consideration. In other words, a gratuitous licensee is not covered under the definition of “licensee” under Section 5(4-A) of the Bombay Rent Act.

28. In paragraph-43, the Full Bench observed that as opposed to this, the expression “license” as defined under Section 52 of the Easements Act provides that where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a license. Section 52 does not require any consideration, material or non-material, to be an element of the definition of “licence”. In *State of Punjab v. Brig Sukhjit Singh*, 1993(3) S.C.C. 459, the Apex Court observed that payment of licence fee is not an essential attribute for subsistence of licence.

29. In paragraph-45, the Full Bench observed that the concept of

licence as reflected in the definition of “licensee” under Section 5(4-A) of the Bombay Rent Act and Section 52 of the Easements Act are contra distinguishable. Under Section 5(4-A) there cannot be licence unsupported by any material consideration whereas under Section 52 payment of licence fee is not an essential attribute for subsistence of licence.

30. A perusal of Section 7(5) of the Maharashtra Rent Act shows that the expressions “licence”, “licensor” and “premises given on licence” are required to be construed in the light of the definition of “licensee” in that provision. While interpreting the expression “licensor” one cannot have resort to Section 52 of the Easements Act as Section 52 does not require any consideration, material or non-material, to be an element of definition of “licence”. The payment of licence fee is not essential attribute for subsistence of licence. In other words, “licensee” defined under Section 52 of the Easements Act includes both licensee paying licence fee or charge as also a gratuitous licensee. As against this, the definition of “licensee” under Section 7(5) of the Maharashtra Rent Act does not include a gratuitous licensee. Thus the expression “licensor” will have to be construed accordingly. The “licensor”, therefore, means a person who has given the premises or such part as the case may be under a subsisting agreement for licence given for a licence fee or charge to a person. Similarly the expression “premises given on licence” has to be construed thereby meaning

that the premises are given on licence subject to charging licence fee or charge.

31. Section 24 of the Maharashtra Rent Act reads thus :

- “24. Landlord entitled to recover possession of premises given on licence on expiry.--** (1) Notwithstanding anything contained in this Act, a licensee in possession or occupation of premises given to him on licence for residence shall deliver possession of such premises to the landlord on expiry of the period of licence; and on the failure of the licensee to so deliver the possession of the licensed premises, a landlord shall be entitled to recover possession of such premises from a licensee, on the expiry of the period of licence, by making an application to the Competent Authority, and the Competent Authority, on being satisfied that the period of licence has expired, shall pass an order for eviction of a licensee.
- (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.
- (3) The Competent Authority shall not entertain any claim of whatever nature from any other person who is not a licensee according to the agreement of licence.

Explanation.-- For the purposes of this section,--

- (a) the expression "landlord" includes a successor-in-interest who becomes the landlord of the premises as a result of death of such landlord; but does not include a tenant or a sub-tenant who has given premises on licence;
- (b) an agreement of licence in writing shall be conclusive evidence of the fact stated therein.”

32. Section 24(1) lays down that notwithstanding anything contained in the Act, a licensee in possession or occupation of premises given to him on licence for residence shall deliver possession of such premises to the landlord on expiry of the period of licence; and on the failure of the licensee to so deliver the possession of the licensed premises, a landlord shall be entitled to recover possession of such premises from a licensee, on the expiry of the period of licence, by making an application to the Competent Authority. Section 24(1), therefore, deals with 'licensee' as defined in Section 7(5) of the Maharashtra Rent Act. Thus the licensee contemplated by Section 24(1) is a licensee who is inducted in the premises under subsisting agreement for licence given for a licence fee or charge. In other words, Section 24(1) of the Maharashtra Rent Act does not deal with a gratuitous licensee.

33. In the case of **Viraf Ichhaporia** (supra), the learned Single Judge has referred to the decision of Full Bench of this Court in **Prabhudas Kotecha** (supra) and reproduced paragraphs-42, 43, 45 and 48. In paragraph-7, it was observed that the "licensee" within the meaning of Section 7(5) must also be a person who is in occupation of any premises under an agreement for licence given for a licence fee or charge.

34. In paragraph-8, it was observed that according to the pleadings of the plaintiff, the defendant was not paying either licence fee or charge or

any rent and therefore he was neither licensee as defined in Section 7(5) nor he was a tenant under Section 71(15) of the Maharashtra Rent Act and, therefore, his case would not be covered either under Sections 22 or 24 of the Maharashtra Rent Act. The landlord, therefore, could not have made an application before the Competent Authority and the provisions as contained in Chapter VIII would not be applicable. The Competent Authority does not have jurisdiction to entertain application of the plaintiff. In my opinion, said judgment applies in all fours to the facts of the present case.

35. In the light of the aforesaid discussion, one has to conclude that as the parties have mutually agreed that there is no monthly compensation payable by the first respondent, the proceeding filed by the petitioner under Section 24 of the Maharashtra Rent Act before the Competent Authority itself was not maintainable. In this view of the matter, explanation (b) to Section 24 will also not be applicable in the present case.

36. The Authorities below have concurrently held that it cannot entertain application filed by the petitioner as the petitioner is not a landlady for the purpose of Section 24 of the Maharashtra Rent Act and returned the application for presentation to the proper forum. As the order was passed by the Competent Authority after a full fledged trial, the Competent Authority after having held that it cannot entertain the application filed by the petitioner herein under Section 24 of the

Maharashtra Rent Act ought to have dismissed the application instead of returning it for presentation to proper forum. The Competent Authority further directed the first respondent to pray for appropriate orders from this Court or such appropriate forum as may be advised. The Commissioner had dismissed Revision Application filed by the petitioner under Section 44 of the Maharashtra Rent Act.

37. In the light of the aforesaid discussion, it has to be held that the application filed by the petitioner under Section 24 of the Maharashtra Rent Act was not maintainable. In view thereof, the petition is disposed of in following terms:

- i. Application filed by the petitioner under Section 24 of the Maharashtra Rent Act is not maintainable and as such is dismissed. The order of the Competent Authority is modified to this extent.
- ii. Liberty is reserved to the first respondent to approach appropriate forum as may be advised as regards deposit of compensation amount of Rs.40,15,000/- and society charges of Rs.1,76,400/-.
- iii. Subject to this, the petitioner is not entitled to any relief.
- iv. Rule is partly made absolute with no order as to costs. Order accordingly.

(R.G. Ketkar, J.)