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application being Case No.17 of 2016 filed by the first respondent under Section 24 of the Maharashtra Rent Control Act, 1999 (for short 'Act'). By the first order, the Competent Authority rejected the application made by the petitioner for leave to defend Case No.17 of 2016. By the second order, the Competent authority allowed the Case No.17 of 2016 filed by the first respondent and directed the petitioner herein to handover the vacant and peaceful possession of the (a) residential Unit No.4 on the first floor, (b) residential Unit No.5 on the second floor and (c) residential Unit No.6 on the second floor in the bungalow known as "Synglesh" situate at Plot No.9, Union Park, Pali Hill, Khar (W), Mumbai 400 052 on the plot bearing C.T.S.No.D/1111/33 of Village Bandra 'D', Taluka Andheri in the Registration District of Mumbai Suburban (for short 'suit premises') to the first respondent. The Petitioner is further directed to pay to the first respondent, a sum of Rs.50,000/- per month being double the amount of monthly compensation of Rs.25,000/- per month from 25.09.2015 till vacant possession of the suit premises is delivered to the first respondent; (iii) judgment and order dated 21.06.2017 passed by the Additional Commissioner, Konkan Division, Mumbai (for short 'Commissioner') in Revision Application No.194 of 2017. By that order, the Commissioner rejected the Revision Application filed by the petitioner.

4. In support of this Petition, Ms Sadh invited my attention to the application for leave to defend filed by the petitioner. Respondent No.1 instituted proceedings under Section 24 of the Act on 22.03.2016. Petitioner filed application for leave to defend within the stipulated period on 13.04.2016. She invited my attention to paragraph 11, clauses (e) to (g) and contended that on 12.08.2013, petitioner handed over original documents of the suit premises to Mr. P. Vas who accepted the same. P. Vas & Co. addressed a letter dated 06.11.2013 to the petitioner

confirming that upon receipt of Rs.3.50 crores, respondent No.1 would handover the original documents to the petitioner. She also invited my attention to the finding recorded by the Competent Authority while refusing to grant leave to defend and in particular paragraph 7. She submitted that petitioner has not received entire consideration of Rs.20 crores under the Conveyance Deed dated 25.06.2015. In fact, the alleged Conveyance Deed was executed for namesake as the petitioner was unable to repay to the first respondent the amounts advanced by the first respondent. As the petitioner was unable to repay the first respondent, he was forced to sign the Conveyance Deed. She further submitted that in fact, the petitioner has instituted Suit No.544 of 2017 for cancellation of the Conveyance Deed after filing of the present Petition. She submitted that as the entire consideration is not paid by the first respondent, petitioner continues to be the owner of the suit premises. The Authorities below were, therefore, not justified firstly, in rejecting the application for leave to defend; secondly, in allowing the application filed by the respondent No.1 under Section 24 of the Act; and thirdly, dismissing the Revision Application.

5. Ms Sadh further submitted that Commissioner has rejected the Revision Application on 21.06.2017. Respondent No.1 had dispossessed the petitioner on 03.07.2017 without serving warrant of possession. She relied upon the decision of this Court in **AMI Merchandising Pvt. Ltd. Vs. State of Maharashtra, 2014 (3) Bom.C.R.248**, and in particular paragraph 51 onwards where this Court has considered Section 45 of the Act. She, therefore, submitted that Petition requires consideration.

6. On the other hand, Mr. Dhakephalkar supported the impugned orders. He submitted that by a registered Conveyance Deed dated 25.06.2015, petitioner had sold the suit premises to the first respondent.

On the same day, registered leave and licence agreement was executed between the parties. The suit premises was given to the petitioner at his request for a period of 3 months commencing from 25.06.2015 and ending on 24.09.2015. After the expiry of 3 months, respondent No.1 repeatedly requested the petitioner to handover possession of the suit premises. As the petitioner failed to handover possession, respondent No.1 was constrained to initiate proceedings under Section 24 of the Act. He invited my attention to the order dated 10.08.2017 passed by this Court, and in particular paragraph 7 thereof. In paragraph 7, the statements made by the first respondent that respondent No.1 has already paid an amount of Rs.11.65 crores and has further offered the balance amount of Rs.8.35 crores; that the said offer is open and that the petitioner may avail this offer even on that date were recorded. Submission made on behalf of the petitioner that the petitioner is ready to refund Rs.11.65 crores was also recorded. Mr. Dhakephalkar submits that even today, the respondent No.1 has brought cheques for Rs.8.35 crores. He submitted that though petitioner received the cheques of Rs.8.35 crores in the past, he did not encash those cheques. Mr. Dhakephalkar also invited my attention to the receipt dated 25.06.2015 duly signed by the petitioner acknowledging receipt of cheques totalling Rs.20 crores. The petitioner however, did not encash cheques worth Rs.8.35 crores. Ms Sadh submitted that petitioner never received any cheques as alleged by the first respondent.

7. Mr. Dhakephalkar submitted that in view of explanation (b) to Section 24 of the Act, an agreement of licence in writing is a conclusive evidence of fact stated therein. He further submitted that present Petition is instituted on 04.07.2017. After presentation of the Petition, petitioner has instituted Suit No.544 of 2017 for cancellation of the Conveyance Deed. The Authorities below were, therefore, justified in

passing the impugned orders. In so far as the grievance of the petitioner of taking over possession on 03.07.2017 is concerned, he invited my attention to the reply dated 05.09.2017 filed by the respondent No.1 and in particular paragraph 12 (xx) and (xxiii).

8. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. At this stage, it is not in dispute that by a registered Conveyance Deed dated 25.06.2015, petitioner had sold the suit premises to the first respondent. Equally, it is not in dispute that on the same day i.e. 25.06.2015, registered leave and licence agreement was executed between the petitioner and the first respondent. Equally, it is not in dispute that as on today, the registered Conveyance Deed dated 25.06.2015 is not cancelled. Undoubtedly, petitioner has instituted Suit No.544 of 2017 for cancellation of that instrument, which is still pending. Explanation (b) to Section 24 of the Act reads thus,

“24 (1) to (3)...

Explanation.-

(a) ...

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

9. In view of the statutory provision, in the form of explanation (b) to Section 24, an agreement of licence in writing is conclusive evidence of the facts stated therein. The contention of the petitioner that the entire consideration was not received by him or that under duress and compulsion, he had signed the Conveyance Deed cannot be gone into by the Competent Authority. The Competent Authority was, therefore, fully justified in rejecting the application for leave to defend. For the reasons recorded in paragraph 7, the Competent Authority rightly held

that no triable issues of law and facts are involved in the present case, and accordingly rejected the application for leave to defend. In view of Section 43(4)(a) of the Act, on the failure of the petitioner in obtaining leave to defend from the Competent Authority, the statement made by the landlord in the application for eviction is deemed to be admitted by the licensee and the landlord is entitled to an order of eviction on the grounds stated in the application.

10. In view thereof, it cannot be said that the Competent Authority committed any error in allowing the application filed by the respondent No.1 under Section 24 of the Act. The Commissioner was also fully justified in rejecting the Revision Application filed by the petitioner. In view thereof, I do not find any merit in the submissions of Ms Sadh that the Authorities below were not justified in passing the impugned orders.

11. In so far as the contention of the petitioner that the Commissioner's order was executed on 03.07.2017 is concerned, in my opinion, the Competent Authority was not justified in issuing warrant of possession. In the case of **AMI Merchandising Pvt. Ltd.** (*supra*), this aspect was considered in paragraphs 51 to 53. In paragraph 53, it was observed thus,

“53. In view of section 45 of the Maharashtra Rent Act extracted hereinabove, in my opinion, the Competent Authority committed serious error in issuing warrant of possession on 06/03/2010. Though the Commissioner directed the Competent Authority to execute order **immediately**, it cannot issue warrant of possession contrary to section 45. In my opinion, the Competent Authority ought to have satisfied itself in terms of section 45 of the Maharashtra Rent Act whether the eviction order had become final and thereafter only issued warrant of possession. Respondents No. 4 and 5 also committed grave error in filing application on the very next day of passing of the order by the Commissioner and executing warrant of possession on the basis of the order passed by the Competent Authority. The Competent Authority

failed to appreciate that section 45 will become applicable only in the event if any person refusing or failing to comply with order of the eviction made under section 43 **“within 30 days of the date on which it becomes final.”**

12. The next question is to what relief, the petitioner is entitled to. I have already upheld the orders passed by the Competent Authority and the Commissioner. At the same time, in my opinion, the Competent Authority clearly acted in excess of its jurisdiction while issuing warrant of possession and executing the warrant on 03.07.2017. Respondent No.1 has obtained possession in the teeth of Section 45 of the Act. Though the petitioner is not entitled to possession of the suit premises, he is required to be compensated in that respect. Respondent No.1 shall pay Rs.50,000/- being at a double rate of monthly compensation of Rs.25,000/- in that regard. Ms Sadh submitted that petitioner has deposited the amount in pursuance of the second order before the Commissioner that may be adjusted against Rs.50,000/-. Hence, Petition is disposed of as under:

- a. The impugned judgment and orders - (i) dated 27.01.2017 rejecting the application made by the petitioner for leave to defend, (ii) dated 27.01.2017 allowing the Case No.17 of 2016 filed by the first respondent and (iii) dated 21.06.2017 passed by the Commissioner in Revision Application No.194 of 2017 are upheld;
- b. Respondent No.1 is directed to pay Rs.50,000/- to the petitioner for taking possession in contravention of Section 45 of the Act. The said amount shall be given due credit from the payment which is required to be made by the petitioner to the respondent No.1.
- c. Rule is partly made absolute in the aforesaid terms with no order as to costs.

14. At this stage, Ms Sadh orally applies for continuation of the ad-interim order of status quo dated 10.08.2017 for a period of two weeks from today. Mr. Dhakephalkar opposes this prayer and submits that even today, respondent No.1 is ready and willing to pay Rs.8.35 crores to the petitioner.

15. As the interim order is operating from 10.08.2017, I find that the request made by Ms Sadh is reasonable. In view thereof, the ad-interim order dated 10.08.2017 shall remain in operation for a period of two weeks from today with express understanding that no application for further extension shall be sought and entertained by this Court. It is also made clear that extension of ad-interim order shall not be construed as an expression of merits of the case. The learned Judge seized of Suit No.544 of 2017 shall consider the application for interim relief on its own merits and on the basis of material on record and in accordance with law. Order accordingly.

(R. G. KETKAR, J.)

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