

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 7918 OF 2017

Babulnath Shitlaprasad Mali

...Petitioner

Versus

Dalchand Moti Daima And Ors.

...Respondents

**WITH
CIVIL APPLICATION [ST] NO.213 OF 2018
IN
Writ Petition NO. 7918 OF 2017**

....

Mr. S.P. Srivastava, Advocate for the Petitioner.

Mr. G.V. Murti i/b. Jamsandekar D.P., Advocate for Respondent No.1.

Mr. Pandey Kamala Kant, for the Applicant in CAW (St) No.213/2018.

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CORAM : R. G. KETKAR, J.

DATE : 30th JULY, 2018

P.C.

1. Heard Mr.S.P. Srivastava, learned counsel for the petitioner, Mr. G.V. Murti, learned Counsel for respondent NO.1 and Mr. K.K. Pandey, learned counsel for the applicant in CAW (St.) No.213/2018, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 1.3.2017 passed by the Competent Authority, Konkan Division, Mumbai (for

short, 'Competent Authority') in Case No.47/2010 as also the judgment and order dated 5.7.2017 passed by the Additional Commissioner, Konkan Division, Mumbai (for short, 'Commissioner'). By these orders, the Authorities below allowed the application made by the first respondent herein and directed the petitioner to handover the vacant and peaceful possession of Room No.11, Moti Thakur Daima Chawl, Plot No.13, C.T.S. No.461, Kherwadi, Bandra (East), Mumbai – 400 051 (for short, 'suit premises') to the first respondent. The petitioner is further directed to pay Rs.720/- towards the arrears of compensation and is further directed to pay Rs.40/- per month being compensation from September, 2010 till vacant possession of the suit premises is delivered to the first respondent.

3. Civil Application (St.) No.213/2018 is taken out by Dinanath Shitlaprasad Mali (for short, 'applicant') for dismissal of application No.47/2010 filed by the first respondent before the Competent Authority.

4. In support of this Petition, Mr. Srivastava strenuously contended that the petitioner is not a licensee of the suit premises. In fact there is no relationship of licensor and licensee between the first respondent and the petitioner herein. He submitted that the first

respondent came with the case that the leave and licence agreement was entered into between the parties some time in the year 1978 and the same was destroyed due to flood caused by rain. As against this in paragraph-6, it is contended that the petitioner herein committed breach of the terms of oral licence and rendered himself liable to be evicted from the suit premises. Mr. Srivastava further submitted that though respondent No.1 claims that the petitioner was inducted in pursuance of agreement of leave and licence of 1978, the alleged licence was terminated by letter dated 15.6.2010. He further submitted that the petitioner was inducted in the suit premises as a tenant and, therefore, the proceedings under Section 24 of the Maharashtra Rent Act, 1999 (for short, 'Act') are not maintainable. In any case he submitted that the photo-pass is issued in favour of the petitioner and even on this count, the authorities below were not justified in passing the impugned orders.

5. Mr. Pandey in support of Civil Application taken out by the applicant for dismissal of the application filed by the first respondent under Section 24 of the Act, invited my attention to the proceedings filed in the Bombay City Civil Court for recovery of possession of the suit premises against the applicant and the petitioner herein on the ground that the applicant is a trespasser as also the petitioner herein

(defendant No.2 in that suit) be declared as a trespasser in respect of the suit premises. He submitted that on one hand respondent No.1 instituted proceedings under Section 24 of the Act on the ground that the petitioner herein is a licensee and on the other before the City Civil Court has claimed that the petitioner is a trespasser. He submitted that by order dated 5.8.2009, the learned Judge of the City Civil Court returned the plaint to the first respondent herein on the ground that City Civil Court has no pecuniary jurisdiction to entertain and try the suit. He submitted that the application filed by the applicant deserves to be allowed.

6. On the other hand, Mr. Murti supported the impugned orders. He submitted that the petitioner admitted that first respondent is the landlord of the suit premises. The petitioner was granted leave to defend the proceedings under Section 24 of the Act. The parties adduced evidence. After considering the material on record the Authorities below concurrently found that the petitioner has not established his tenancy rights. Considering the preponderance of probabilities, the authorities below came to the conclusion that the petitioner was inducted as a licensee in the suit premises. He, therefore, submitted that no case is made out for interfering with the impugned orders.

7. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. Respondent No.1 has instituted proceedings under Section 24 of the Act against the petitioner on the ground that he was inducted as a licensee in the suit premises in the year 1978. It is common ground between the parties that leave and licence agreement is not produced on record. In view thereof, the first respondent cannot take benefit of explanation (b) to Section 24 of the Act. Explanation (b) to Section 24 of the Act lays down that an agreement of licence in writing is conclusive evidence of the fact stated therein. As the first respondent did not produce the agreement of leave and licence in writing, he cannot take advantage of the statutory presumption under explanation (b) to Section 24 of the Act.

8. By order dated 1.2.2011, the Competent Authority granted leave to defend on the ground as per the version of the first respondent the leave and licence agreement was executed for 11 months in the year 1978 and said agreement was destroyed due to flood, which means there is no leave and licence agreement. As also having regard to the fact that the proceedings are instituted after 32 years of the agreement and that the petitioner herein denied the relationship of licensor and licensee, it was just and proper to grant leave to defend and recording

of evidence is necessary.

9. In pursuance thereof, the petitioner filed written statement. A perusal of paragraph-3 of the written statement shows that the petitioner herein admitted that he was inducted by the first respondent in the suit premises and was paying Rs.12/- per month as and by way of rent to the first respondent. In other words, the petitioner admitted that the first respondent is the landlord of the suit premises. He further came with the case that he is inducted as a tenant in the suit premises. After considering the evidence on record, the authorities below concurrently held that no evidence was adduced by the petitioner to substantiate his claim of tenancy. The authorities below, therefore, held that the petitioner was inducted as a licensee in the suit premises. After perusing the material on record, I do not find that the authorities below committed any error in arriving at that conclusion. The Commissioner observed that though the petitioner denied the relationship between the parties, he failed to place on record any tenancy agreement as also rent receipts, if any, issued by the first respondent. The petitioner has produced on record photo-pass and survey receipt which do not establish that said documents are in respect of the suit premises. Even if it is assumed in favour of the petitioner that these documents are in respect of the suit premises nonetheless these documents will not

establish that the petitioner was inducted as a tenant in the suit premises. In view thereof, I do not find that the authorities below committed any error in passing the impugned orders. Hence, Petition fails and the same is dismissed.

10. Insofar as Civil Application (St.) NO.213/2018 is concerned, admittedly the applicant did not file any application either before the Competent Authority or before the Commissioner. The authorities below have concurrently found that the petitioner herein was inducted as a licensee. In view of Section 24(3) of the Act the Competent Authority is precluded from entertaining any claim of whatsoever nature from any other person who is not a licensee according to the agreement. In view thereof, no case is made out for granting any relief in the Civil Application. Civil Application fails and the same is dismissed.

11. At this stage, Mr. Srivastava orally applies for stay of this order for a period of eight weeks from today. He submits that he is ready and willing to deposit the arrears of compensation as per the order dated 1.3.2017 passed by the Competent Authority in this Court. However as the petitioner is not in possession of the suit premises, he is unable to give undertaking of the petitioner and all adult family members residing in the suit premises to the effect that in case they are

unable to obtain suitable orders from the Apex Court they will hand over vacant and peaceful possession of the suit premises to the first respondent. In view thereof, oral application for stay is rejected. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)

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by Pradipkumar
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Date: 2018.08.02
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