

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.7480 OF 2018**

Jaganath Mahadeo Galande	]	Petitioner
Vs.		
Ranjana Madhukar Holkar	]	Respondent
.....		
Mr. P.J. Thorat, for Petitioner.		
Mr. Sameer K. Sawant, for Respondent.		
.....		

CORAM : R.G. KETKAR, J.

DATE : 23rd AUGUST, 2018.

P.C.

Heard Mr. Thorat, learned Counsel for the petitioner and Mr. Sawant, learned Counsel for the respondent at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged;

- [1] the order dated 4th December, 2017 (for short 'first order')
- [2] the order dated 4th December, 2017 (for short 'second order')
passed by the Competent Authority (Rent Act) Konkan Division, Mumbai (for short 'Competent Authority'); as also
- [3] the judgment and order dated 16th May, 2018 passed by the Additional Commissioner, Konkan Division, Mumbai (for short 'Commissioner') in Revision Application No.1300 of 2017.

By the first order, the Competent Authority rejected the application filed by the petitioner to defend Case No.85 of 2016 filed by the respondent. By the second order dated 4th December, 2017, the Competent Authority allowed proceedings filed by the respondent under section 24 of the Maharashtra Rent Control Act, 1999 (for short 'Act'). By order dated 16th May, 2018, the Commissioner dismissed the Revision Application filed by the petitioner herein.

3. In support of this Petition, Mr. Thorat submitted that the respondent claimed ownership of the suit premises on the basis of;

- [1] notarized Agreement for Sale
 - [2] notarized General Power of Attorney
 - [3] notarized deed of transfer
- all dated 17th November, 2014.

Respondent further came with the case that on 9th December, 2014, the suit premises was given to the petitioner herein for a period of eleven months on leave and licence basis. He submitted that all these documents are fabricated by the respondent. In fact, the petitioner has instituted suit in the City Civil Court challenging these documents and the same is pending.

4. Mr. Thorat further submitted that the Agreement for Sale, General Power of Attorney and leave and licence agreement are executed towards security of loan amount. The respondent has paid Rs.15,50,000/- to the petitioner and for securing re-payment of this amount, these documents were executed. He relied on the decision of this Court in case of **Mr. Vijay S. Machindar Vs. Mr. Puneet Jitendra Sejpai & Ors, 2017 (6) ALL MR 1** and in particular paragraphs 12 and 13 thereof to contend that as the petitioner has raised triable issues, the Competent Authority was not justified in rejecting the application for leave to defend. As the respondent has taken over possession of

the suit premises, amount deposited by the petitioner in pursuance of the order dated 18th July, 2018 may be allowed to be withdrawn by the petitioner.

5. On the other hand, Mr. Sawant supported the impugned orders. He submitted that by the second order dated 4th December, 2017 while allowing the application filed by the respondent under section 24 of the Act, Competent Authority directed the petitioner to pay Rs.6,000/- per month from 1st July, 2017 and subsequently, Corrigendum was issued to the Competent Authority directing the petitioner to pay Rs. 6,000/- per month from 1st July, 2016 in stead of 1st July, 2017 till vacant possession of the suit premises is delivered to the respondent. In other words, he submitted that the petitioner is liable to pay Rs.6,000/- per month from 1st July, 2016 till handing over possession on 6th July, 2018.

6. I have considered the rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. Chapter V of the Act lays down special provisions for recovery of possession in certain cases.

Section 24 of the 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 such 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”.

7. A perusal of the above extracted provision shows that a licensor can approach the Competent Authority for recovery of possession from licensee. Chapter VIII lays down summary disposal of certain applications. Section 39 lays down that provisions of this Chapter or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained elsewhere in the Act or in any other law for the time being in force.

8. Section 42 lays down special provisions for making application to Competent Authority by landlord for eviction of the licensee. Section 43 lays down special procedure for disposal of the applications. Section 43 (4) (a) reads thus;

“43(4) (a) The tenant or licensee on whom the summons is duly served in the ordinary way 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. A perusal of above extracted provision shows that the tenant or licensee is precluded from contesting the prayer for eviction from the premises unless within the period of thirty days of the service of summons, he files an affidavit stating grounds on which he seeks to contest the application for eviction and obtains leave from the Competent Authority, failing which the statements 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 licensor is entitled to an order for eviction on the grounds stated in the application.

10. In the present case, it is not in dispute that the petitioner has received an amount of Rs. 15,50,000/- from the respondent. Explanation (b) to section 24 lays down that an agreement of license in writing shall be conclusive evidence of the fact stated therein. It is the case of the petitioner that the Agreement for Sale, General Power of Attorney, Deed of Transfer dated 17th November, 2014 are notarized documents and are not registered instruments. The documents are fabricated by the respondent. The powers of the Competent Authority under Chapter VIII are circumscribed. The Competent Authority has to dispose of the proceedings in a summary manner. In view thereof, the Competent Authority cannot go into the question whether the documents are fabricated or not.

11. Mr. Thorat relied on the decision of this Court in the case of **Mr. Vijay S. Machinder** (supra). In that case, the petitioners therein had filed affidavit seeking leave to contest the proceedings under section 24 of the Act,

inter alia, contending that leave and licence agreements dated 23rd June, 2009 and 28th July, 2009 were executed under which the petitioners had borrowed an amount of Rs. 2.25 crores from the first respondent. It was submitted that the loan amount was since been repaid through banking transactions and post such repayment, there was no question of either parties relying upon the leave and licence agreements.

12. In the instant case, the petitioner has not come with the case that he has paid entire loan amount to the respondent. Case of the petitioner is that though he tried to repay loan amount, the respondent did not accept the said amount. Be that as it may, in the case of **Vijay S. Machinder** (supra) payment was made through banking transactions. In my opinion, the said decision, therefore, is not applicable to the facts of the present case. The Competent Authority came to the conclusion that no triable issues were raised by the petitioner and accordingly rejected the application for leave to defend. In view of section 43(4) (a), as leave to defend was refused, consequences laid down therein follow and accordingly, the Competent Authority allowed the application under section 24 of the Act. The said order was confirmed by the Commissioner.

13. In the light of the aforesaid discussion, I do not find that the Authorities below committed any error in passing the impugned order. Hence, the Petition fails and the same is dismissed. Respondent is at liberty to withdraw the amount deposited by the petitioner in this Court unconditionally. Liberty is reserved to the respondent to recover amount @ Rs. 6,000/- per month from 1st July, 2016. Order accordingly.

[R.G. KETKAR, J.]