

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition (ST) NO. 20322 OF 2018

Fida Films & Hotels Co. Pvt. Ltd.

...Petitioner

Versus

Hybrid Financial Services Ltd.

And others.

...Respondents

....

Mr. Rushabh Sheth, Advocate for the Petitioner.

Mr. Mayur Jariwalla, Advocate for Respondent No.1.

Ms. M.S. Bane, AGP, for Respondents No.3 & 4.

Mr. Rohit Gupta a/w. Nikhil Rajani i/b. M/s. V. Deshpande & Co. for Respondent No.5.

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CORAM : R. G. KETKAR, J.

DATE : 29th AUGUST, 2018

P.C.

1. Heard Mr. Rushabh Sheth, learned counsel for the petitioner, Mr. Mayur Jariwalla, learned counsel for respondent No.1, Ms. M.S. Bane, learned A.G.P. for respondents No.3 & 4 and Mr. Rohit Gupta, learned counsel for respondent No.5, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 5.1.2017 passed by the Additional Commissioner, Konkan Division, Mumbai (for short, 'Commissioner') in Revision Application No.4/2016. By that order, the Commissioner partly allowed Revision Application filed by the first respondent herein and set aside the order dated 25.6.2013 passed by the

Competent Authority, Konkan Division, Mumbai (for short, 'Competent Authority') in Application No.68/2011. The Commissioner remitted the matter to the Competent Authority for fresh hearing. The Commissioner held that respondent No.1 is entitled to occupy flat No.193, 19th floor, Jolly Maker-III, Varuna Premises Co-operative Housing Society Limited, Cuffe Parade, Mumbai – 400 005 (for short, 'suit premises') till recovery of security deposit of Rs.80 Lakhs from the second respondent herein.

3. Rule. Learned Counsel for respective respondents waives service. Notice of Rule on respondent No.2 is dispensed with. 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.

4. In support of this Petition, Mr. Sheth submitted that respondent No.2 Abedin Fakruddin Kagalwala was the erstwhile owner of the suit premises. He obtained Credit Facility from Bank of Baroda by mortgaging the suit premises. As the loan was not repaid, Bank of Baroda instituted Original Application No.1780/2000 before the Debts Recovery Tribunal-II, Mumbai (for short, 'D.R.T.') against (1) M/s. Vatan Dyechem (Exports) Ltd., (2) Abedin Kagalwala (respondent No.2 herein), (3) Izuddin Kagalwala and (4) Saifuddin M. Khokhar. By order dated 12.12.2005, the D.R.T. allowed the application filed by the Bank of Baroda and issued

directions against respondents No.1 to 4 therein. It was declared that the outstandings are secured by equitable mortgage of properties which included the suit premises. D.R.T. also ordered issue of recovery certificate. He submitted that in pursuance thereof on 3.1.2006, recovery certificate was issued in favour of Bank of Baroda. Respondent No.1 filed application for intervention before the Recovery Officer which was rejected on 29.4.2011. Aggrieved by this decision, respondent No.1 preferred Misc. Application No.57/2011 before the D.R.T.-II, Mumbai. By order dated 12.12.2011, D.R.T. disallowed Misc. Application filed by respondent No.1 herein and partly allowed Appeal No.30/2011. The order dated 29.4.2010 below Exhibit-2 passed by the Recovery Officer in recovery proceedings was partly set aside. It was declared that respondent No.1 herein is entitled to occupy the suit premises until receipt of security deposit of Rs.80 Lakhs.

5. Aggrieved by that decision, two Misc. Appeals were preferred before the Debts Recovery Appellate Tribunal at Mumbai (for short, 'D.R.A.T.'), namely, Misc. Appeal No.29/2012 by respondent No.5 herein and Misc. Appeal No.117/2012 by the first respondent herein. By order dated 17.8.2017 the Chairperson of D.R.A.T., Mumbai allowed Misc. Appeal No.29/2012 and set aside the order passed by the D.R.T. Appeal No.117/2012 preferred by the first respondent herein was dismissed.

6. Mr. Sheth submitted that aggrieved by this decision, respondent

No.1 instituted Writ Petition No.12113/2017 before the Division Bench of this Court. On 18.12.2017, this Court declined to stay the auction sale of the suit premises after recording statement of respondent No.5 herein that in the event the Court so directs respondent No.5, without prejudice to its rights and contentions, will deposit Rs.80 Lakhs along with interest after the auction sale was conducted.

7. Mr. Sheth submitted that the petitioner herein was declared as the highest bidder in the auction sale conducted by the fifth respondent. The petitioners have paid the outstanding dues of the society to the extent of Rs.59 Lakhs. Upon clearing the arrears of the society charges, the society also issued NOC for transferring the suit premises and closed garage in favour of the petitioner herein. He invited my attention to panchnama dated 9.10.2017. Mr. Sheth submitted that respondent No.5 initiated the proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (for short, 'SARFAESI Act') by filing application under Section 14 thereof. On 14.12.2012, the learned Magistrate allowed the application. Respondent No.5 made statement that they will not proceed to recover the possession. Thereafter respondent No.5 filed Misc. Application for execution of the order dated 14.12.2012 which was allowed on 17.9.2016.

8. Mr. Sheth submitted that the order dated 12.12.2005 passed by

the D.R.T. was not challenged by the respondents therein and has attained finality. He submitted that respondent No.1 filed Summary Suit for recovery of the security deposit against respondent No.2 herein. The suit was decreed on 19.3.2004 and the execution proceedings are pending before D.R.T. He submitted that basically the Commissioner was not justified in remitting the matter to the Competent Authority as no leave to defend application was filed. He invited my attention to the rozanama dated 2.2.2012 which recorded that on behalf of the first respondent Vakalatnama was filed by the Advocate and the matter was adjourned to 14.2.2012 for filing application for leave to defend. He submitted that after following due process of law the petitioner has purchased the suit premises and is put in possession. The Commissioner was, therefore, not justified in holding that till such time the security deposit of Rs.80 Lakhs is recovered by the first respondent, it is entitled to remain in possession. He submitted that the proceedings before the D.R.A.T as also the SARFAESI proceedings were not brought to the notice of the Competent Authority as also the Commissioner.

9. Mr. Sheth further submitted that as required by Section 44 of the Maharashtra Rent Control Act, 1999 (for short, 'Act'), Revision Application is required to be filed within 90 days. In the present case, no prayer for condonation of delay was made in Revision Application. Even no separate

application for condoning the delay is filed. In short he submitted that the order passed by the Commissioner is a nullity as the revision was filed beyond the prescribed period of limitation without filing an application for condonation of delay.

10. Mr. Gupta appearing for respondent No.5 submitted that respondent No.1 wants his security deposit of Rs.80 Lakhs and in view thereof the Commissioner was not justified in holding that respondent No.1 can continue to occupy the suit premises till recovery of security deposit of Rs.80 Lakhs more so when respondent No.1 adopted proceedings for recovery of Rs.80 Lakhs.

11. Mr. Jariwalla submitted that submitted that leave and licence agreement was executed between the first respondent and the second respondent on 11.02.1997. By notice dated 04.03.1999, the licence was terminated. Respondent No.2 instituted proceedings under Section 24 of the Act. He submitted that the first respondent was not duly served and also did not engage any Advocate. Respondent No.1 did not sign Vakalatnama in favour of any Advocate. He invited my attention to page 127 of Writ Petition No.8553/2017, which is Rojnama of Case No.68 of 2011. Rojnama dated 02.02.2012 records that the Advocate for the second respondent and the Advocate for the first respondent herein were present. Vakalatnama was filed by the Advocate appearing for the first respondent herein and matter

was adjourned to 14.02.2012 for filing leave to defend application. Mr. Jariwalla submitted that the first respondent did not authorize any Advocate to file Vakalatnama. The first respondent realized passing of the order dated 25.06.2013 by the Competent Authority only after they were forcibly dispossessed. He submitted that respondent No.2 also did not refund the security deposit of Rs.80 lakhs. For recovery of security deposit, the first respondent instituted Summary Suit on the Original Side of this Court. The Suit was decreed on 19.03.2004. The first respondent have also filed Darkhast proceedings before this Court. By order dated 14.02.2008, the execution proceedings are transmitted to Recovery Officer, Mumbai Debt Recovery Tribunal No.II and those execution proceedings are pending.

12. Mr. Jariwalla invited my attention to the order dated 12.12.2011 passed by the learned Presiding Officer, Debts Recovery Tribunal II, Mumbai in Miscellaneous Application No.57 of 2011. D.R.T. rejected the Miscellaneous Application and set aside the order dated 29.04.2010 below exhibits 34 and 173 passed by the Recovery Officer in Recovery Proceedings No.4 of 2006 and held that the first respondent herein are entitled to occupy the suit premises until receipt of security deposit of Rs.80 lakhs. It is common ground between the parties that aggrieved by this order, Miscellaneous Appeal No.29 of 2012 was filed by respondent No.5 International Asset Reconstruction Company and Miscellaneous Appeal

No.117 of 2012 was filed by the first respondent herein. By common order dated 17.08.2017, the Chairperson of Debt Recovery Appellate Tribunal allowed Miscellaneous Appeal No.29 of 2012 and set aside the order passed by the D.R.T. II, and dismissed Miscellaneous Appeal No.117 of 2012. It is further common ground between the parties that aggrieved by this decision, the first respondent have instituted Writ Petition before the Division Bench of the Original Side of this Court and ad-interim order was specifically refused. The said Petition is pending.

13. Mr. Jariwalla submitted that the Competent Authority allowed the application filed under Section 24 of the Maharashtra Rent Control Act, 1999 (for short 'Act') on the ground that as no leave to defend was granted to the first respondent to contest the proceedings, and the licence is revoked by issuing notice dated 04.03.1999, the first respondent is liable to handover possession of the suit premises. He submitted that till date, respondent No.2 has not refunded security deposit of Rs.80 lakhs. The Commissioner was not justified in remitting the matter to the Competent Authority. The Commissioner, however, held that petitioners are entitled to occupy the suit premises till the recovery of the security deposit from the second respondent is made.

14. 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, it is not in dispute that the suit premises was given on leave and licence basis on 11.02.1997 for residential use. By notice dated 04.03.1999, licence was terminated and thereafter proceedings under Section 24 of the Act were initiated by the second respondent. Chapter VIII of the Act lays down summary disposal of the applications filed under Sections 22 or 23 or 24 of the Act. Section 39 lays down that the provisions of Chapter VIII 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. Section 43 lays down the special procedure for disposal of applications. Section 43(4)(a) lays down that the tenant or licensee on whom the summons is duly served in the ordinary way or by registered post is precluded from contesting the prayer for eviction from the premises, unless within 30 days of the service of summons on him, he files an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Competent Authority, 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 is entitled to an order for eviction on the ground stated therein.

15. As it is not in dispute that the suit premises was given on leave

and licence basis for residential purpose to the first respondent and their licence is duly revoked, I do not find that the Competent Authority committed any error in passing the order on 25.06.2013. The contention of the first respondent that it had never authorized Advocate and also did not sign Vakalatnama cannot be gone into in as much as in the Rojnama dated 02.02.2012, the Competent Authority specifically observed that on behalf of the first respondent, Vakalatnama was filed by the Advocate and the matter was adjourned for filing application for leave to defend. As no application for leave to defend was filed, the Competent Authority allowed the application filed under Section 24 of the Act.

16. As mentioned earlier, even the first respondent has initiated proceedings for recovery of security deposit of Rs.80 lakhs from the second respondent. The Suit was also decreed and the execution proceedings are pending before the Recovery Officer, Mumbai Debt Recovery Tribunal No.II. In view thereof, no case is made out for interfering with the order passed by the Competent Authority.

17. Aggrieved by the decision of Competent Authority, respondent No.1 filed Revision Application No.4/2016. A perusal of Revision Application filed by the first respondent does not indicate that any prayer was made for condoning the delay in filing Revision Application. No separate application for condonation of delay was filed. In paragraph-6 of

Revision Application, it was stated that the Competent Authority passed order on 25.6.2013 and the possession of the suit premises was taken on 5.11.2014. Respondent No.1 came to know about passing of the order in October, 2015. Revision Application is filed in December, 2015. In other words within 90 days from 25.6.2013, Revision Application was not filed.

18. In the case of **Prakash H. Jain v. Marie Fernandes, (2003) 8 SCC 431**, The Apex Court after analyzing the provisions of the Act held that unless the law warrants and permits it, there is no inherent power of Court to condone the delay in filing proceedings before the Court/authority concerned. In view of the caption of Chapter VIII and overriding effect of the provisions thereof under Section 39, the said provisions stand apart, distinctly and divorced from the rest of the Act, except to the extent indicated therein itself and for that matter has been given an overriding effect over any other provisions in the very Act or any other law for the time being in force. It was held that the Competent Authority constituted under the Act is not “Court” and the mere fact that such authority is deemed to be Court only for limited and specific purposes, cannot make it a Court for all or any other purpose and at any rate for the purpose of either making the provisions of the Limitation Act, 1963 attracted to the proceedings or clothe such authority with any power to be exercised under the Limitation Act.

19. In view thereof, I find merit in the submission of Mr. Sheth that

the Commissioner was not justified in entertaining Revision Application and passing the impugned order.

20. In any case as noted earlier, respondent No.1 has initiated proceedings for recovery of Rs.80 Lakhs and the execution proceedings are pending before the D.R.T. In view thereof, the direction issued by the Commissioner that till such time respondent No.1 recovers the security deposit it is entitled to occupy the suit premises cannot be sustained. The petitioner has obtained the possession by following due process of law as indicated hereinabove. In view thereof, the order dated 5.1.2017 passed by the Commissioner cannot be sustained and is liable to be set aside. Accordingly, the impugned order dated 5.1.2017 passed by the Commissioner is set aside. Revision Application No.4/2016 filed by respondent No.1 is dismissed. Rule is made absolute in aforesaid terms with no order as to costs. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)

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by Pradipkumar
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