

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION [ST] NO.23724 OF 2018

Vinod B. More] Petitioner
Vs.
Satish Ramanlal Patel and another] Respondents

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Mr. N.J. Patil i/b Manohar V. Shetty, for Petitioner.
Dr. Abhinav Chandrachud i/b Vikrant Zunjarrao i/b Zunjarrao & Co., for
Respondent No.2.

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CORAM : R.G. KETKAR, J.

DATE : 16th OCTOBER, 2018.

P.C:

Heard Mr. Patil, learned Counsel for the petitioner and Dr. Chandrachud, learned Counsel for respondent No.2 at length.

2. This Petition takes exception to;
- [1] the order dated 9th November, 2017 passed by the Competent Authority, Konkan Division, Mumbai (for short 'Competent Authority') in Case No.99 of 2016 declining to grant leave to defend to the petitioner (first order).
- [2] the order dated 9th November, 2017 passed by the Competent Authority by which the application made by the respondents under section 24 of the Maharashtra Rent Control Act, 1999 (for short 'Act') was allowed and the petitioner herein is directed to hand over vacant and peaceful possession of Flat No.703, "A" Wing, Darpan CHS,

Veera Desai Road, Andheri (W), Mumbai 400 053 (for short 'suit premises') to the respondent herein (second order) and

[3] the orders dated 30th July, 2018 passed by the learned Additional Commissioner, Konkan Division, Mumbai (for short "Commissioner") in Revision No.1198 of 2017 and 1199 of 2017. By these orders, the Commissioner rejected the Revision Applications preferred by the petitioner against the orders dated 9th November, 2017 passed by the Competent Authority.

3. In support of this Petition, Mr. Patil strenuously contended that the Competent Authority committed error in declining leave to defend proceedings filed by respondent No.2 under section 24 of the Act. He has taken me through the affidavit filed by the petitioner and in particular paragraphs 2,3,4 and 8. He submitted that the purported registered leave and licence agreement entered into between the parties on 20th July, 2015 does not reflect real transaction between the parties. In fact, it was agreed between the parties that respondent No.2 will sell the suit premises to the petitioner. Respondent No.2 informed the petitioner that he wanted to sell flat for a price of Rs. 1,58,00,000/- and that there was a dispute with the society. Respondent No.2 urgently wanted a cash amount of Rs.8,00,000/- for settling the dispute with the society.

4. Mr. Patil further submitted that the suit premises is not in a habitable condition. As there is no relationship of licensor and licensee between the parties and real transaction between the parties was to sell the suit premises to the petitioner, the Competent Authority was not justified in refusing to grant leave to defend. He submitted that for the grounds stated in the affidavit, the Competent Authority ought to have granted leave to defend.

In support of this proposition, he relied on the decision of this Court in **Vijay S. Machindar Vs. Puneet Jitendra Sejpal and Ors., 2017 (6) ALL MR 1.**

5. Mr. Patil further submitted that before passing order under section 24 of the Act, Competent Authority did not follow the practice and procedure including recording of evidence. No opportunity was given to the petitioner to cross-examine witnesses of the 2nd respondent. In support of this proposition, he relied on the decision of this Court in **Fundacio Privada Intervida Vs. Additional Commissioner, Pune Division, Pune and another, 2005 (2) Mh. L. J 769.**

6. On the other hand, Dr. Chandrachud supported the impugned orders. He submitted that after considering the material on record as also the fact that the registered leave and licence was entered into between the parties for using the suit premises for residential purpose, the Authorities below passed the impugned orders. The Competent Authority considered Section 24 of the Act and observed that agreement of licence in writing is conclusive evidence of fact stated therein. The Competent Authority accordingly came to the conclusion that the grounds raised in the Affidavit filed by the petitioner do not make out any case for granting leave to defend the proceeding. In view of section 43 (4) (a) after declining to grant leave to defend, the Competent Authority proceeded to decide application under section 24 of the Act. The said orders are confirmed by the Commissioner. He, therefore, submitted that no case is made out for interfering with the impugned orders.

7. I have considered rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. With the assistance of learned Counsel for the parties, I have perused affidavit of the petitioner seeking leave to contest the application. It is also not in dispute that the parties

entered into registered leave and licence agreement on 20th July, 2015. The suit premises was given for residential purpose. Explanation (b) to section 24 of the Act lays down that an agreement of licence in writing shall be conclusive evidence of the fact stated therein. Section 43 (4) (a) reads thus;

“Section 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;

A perusal of the above extracted provision shows that the licensee is precluded from contesting the prayer for eviction from premises unless he obtains leave from the Competent Authority by filing affidavit stating grounds on which he seeks to contest the application for eviction. It further lays down that on his failure in obtaining leave to defend, the statement made by the landlord in the application for eviction shall be deemed to be admitted by the licensee and the applicant is entitled to an order for eviction.

8. In the present case, after considering the grounds set out by the petitioner in the affidavit for leave to defend, the Competent Authority rejected the application. In paragraph 8, the Competent Authority referred to the leave and licence agreement and the fact that it expired on 30th June, 2016. The Competent Authority referred to section 24 (3) of the Act and observed that the leave and licence agreement being a registered document, the terms and conditions thereof are in the nature of conclusive proof of the fact stated

therein. The Competent Authority, therefore, declined leave to defend under section 24 (3) of the Act. The Competent Authority on the same date allowed the application for eviction. In paragraph 12, the Competent Authority noted that there is no dispute about execution of registered leave and licence agreement dated 20th July, 2015 for a period of 11 months from 1st July, 2015 to 30th June, 2016. During subsistence of leave and licence agreement, respondent No.2 issued termination notice on 14th March, 2016. After expiry of licence period on 30th June, 2016, respondent No.2 issued termination notices dated 14th July, 2016 and 1st August, 2016 to the petitioner. Despite that, the petitioner continued to occupy the suit premises and failed to hand over possession to respondent No.2. In paragraph 13, the Competent Authority considered explanation (b) to section 24 of the Act and observed that leave and licence being a registered document, terms and conditions thereof are in the nature of conclusive proof of the fact stated therein.

9. Aggrieved by these decisions, the petitioner preferred Revisions before the Commissioner. The Commissioner also rejected the revision applications and upheld the orders passed by the Competent Authority. The Commissioner noted that the parties entered into leave and licence agreement and contention of the petitioner regarding sale transaction cannot be accepted. In so far as contention of the petition that the suit premises is not in a habitable condition is concerned, the Commissioner observed that the petitioner did not issue a single letter or notice calling upon the respondent No.2 to rectify the defects or repair the suit premises. After perusing the material on record and particularly impugned order, I do not find that the Authorities below committed any error in passing the impugned orders.

10. Mr. Patil relied on the decision of this Court in **Vijay S. Machindar** (supra). In the facts of that case, this Court found that the

petitioner was entitled to leave to defend. In the present case, I do not find that any ground is raised by the petitioner for granting leave to defend. This decision does not apply to the facts of the present case. He also relied on the decision in **Fundacio Privada Intervida** (supra) to contend that the Competent Authority did not follow the practice and procedure. I do not find any merit in this submission. The question of recording of evidence will arise only after the petitioner obtaining leave to defend. In view of section 43 (4) (a) of the Act, once leave to defend is rejected, there is no question of permitting the parties to adduce evidence and cross-examine the witness. In view thereof, this decision is also not applicable to the facts of the present case.

11. That apart, the Petition was heard on 1st October, 2018 and was adjourned to 3rd October, 2018 so as to enable Mr. Patil to take instructions as to within what time, the petitioner will deposit amount @ Rs. 78,000/- per month from 1st July, 2016 till 30th September, 2018. Upon taking instructions from the petitioner, a statement was made that the petitioner will deposit the amount in this Court within 2 weeks. Accordingly, the matter was adjourned till today. It was made clear that in case the petitioner does not deposit the amount in this Court in the aforesaid terms, ad-interim order shall stand vacated without further reference of the Court. Mr. Patil submits that the petitioner has not deposited the amount. In view thereof also, no case is made out for interfering with the impugned orders. Hence, Petition fails and the same is dismissed.

12. The parties to act upon an authenticated copy of this order.

[R.G. KETKAR, J.]