

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4863 OF 2018

Satish Narayan Uchil ... Petitioner

Vs.

Ravinder Pal Jolly and others ... Respondents

WITH

WRIT PETITION NO.3057 OF 2018

Ravinder Pal Jolly ... Petitioner

Vs.

The Competent Authority, Konkan Division and others ... Respondents

Ms Archana Khan for Petitioner in W.P.No.4863 of 2018.

Mr. Rahul Motkari for Petitioner in W.P.No.3057 of 2018.

Mr. Nikhil Rajeshirke for Respondents No.3 and 4 in W.P.No.3057 of 2018 and for Respondents No.4 and 5 in W.P.No.4863 of 2018.

Mr. P. P. Pujari, AGP for Respondents No.2 and 3 in W.P.No.4863 of 2018 and for Respondents No.1 and 2 in W.P.No.3057 of 2018.

CORAM : R. G. KETKAR, J.

DATE : OCTOBER 24, 2018

P.C. :

Heard Ms Khan, learned Counsel for the petitioner in W.P.No.4863 of 2018, Mr. Motkari, learned Counsel for the petitioner in W.P.No.3057 of 2018, Mr. Rajeshirke, learned Counsel for respondents No.3 and 4 in W.P.No.3057 of 2018 and for respondents No.4 and 5 in W.P.No.4863 of 2018, Mr. Pujari, learned AGP for respondents No.2 and 3 in W.P.No.4863 of 2018 and for respondents No.1 and 2 in W.P.No.3057 of 2018 at length.

2. Writ Petition No.3057 of 2018 is instituted by Ravinder Pal Jolly, hereinafter referred to as '**Jolly**', challenging - (1) the judgment and order dated 11.05.2016 rejecting the application made by **Jolly** for leave to defend (for short 'first order') and (2) the judgment and order dated 11.05.2016, both, passed by the passed by the Competent Authority, Bandra (East), Konkan Division, Mumbai (for short 'Competent Authority') in Case No.19 of 2013 (for short 'second order'). By that

order, the Competent Authority allowed the application filed by Vijay Nilkanthrao Bhorkar and Swati Vijay Bhorkar, hereinafter referred to as '**Bhorkars**', and directed **Jolly** to handover vacant and peaceful possession of flat No.101, building No.21, Oshiwara Gulmohar CHS Ltd., MHADA Complex, Oshiwara, Andheri (W), Mumbai 400 053 (for short 'suit premises') to **Bhorkars**. **Jolly** is further directed to pay to **Bhorkars** Rs.3,000/- per month from 06.09.2010 till vacant possession of the suit premises is handed over to **Bhorkars**; as also (3) the order dated 05.08.2017 passed by the Additional Commissioner, Konkan Division, Mumbai (for short 'Commissioner') rejecting the Revision Application filed by **Jolly** under Section 44 of the Maharashtra Rent Control Act, 1999 (for short 'Act').

3. Writ Petition No.4863 of 2018 is instituted by Satish Narayan Uchil, hereinafter referred to as '**Uchil**', challenging the first and second order dated 11.05.2016 passed by the Competent Authority and order dated 05.08.2017 passed by the Commissioner as also warrant of possession issued by the Competent Authority on 10.08.2017.

4. As the Petitions challenge common orders, the same can conveniently be disposed of by this order. The relevant and material facts for disposal of the present Petitions, briefly stated, are as follows:

5. It is the case of **Uchil** that he was issued letter of allotment by Maharashtra Housing and Area Development Authority (MHADA) on 19.11.1997 allotting the suit premises on ownership basis. **Uchil** was put in possession of the suit premises in pursuance of possession letter dated 22.12.1997. **Uchil** is working as electrician and Vijay Bhorkar was working in the real estate business run by his cousin Rajendra Bhorkar in the name and style of 'Varun Estate'. Vijay and his cousin were referring the electrical work of their sale flats to him. He used to assist

Vijay and his cousin in their real estate work in Andheri MHADA Housing Complexes at Oshiwara. Vijay was paying him commission, sometimes by cash or cheques of Rs.5,000/- to Rs.15,000/- on and off, depending upon the work transacted. **Uchil** acquired the suit premises by virtue of allotment letter dated 19.11.1997 through the help and office of Vijay and his cousin Rajendra, for a total sum of Rs.27,75,976/- on installment basis. His mother was seriously ill and he was put to severe financial burden of medical / hospital expenses. He lost his mother. Due to this and another financial constraints, **Uchil** was struggling to pay MHADA installments and suffered often defaults. In mutual relation of bonafide trust and goodwill, Vijay agreed to look after the suit premises. Vijay got **Uchil** to execute a Power of Attorney dated 29.08.2005. As he was in a dire need of finances, he inducted **Jolly** in the suit premises by virtue of Memorandum of Understanding dated 12.01.2007 / February 2008 and put him in physical possession of the suit premises. **Bhorkars** played fraud and by exercising deceptive practice upon **Uchil**, they got him to execute the alleged agreement for sale dated 06.09.2010 before the registering authority under the genuine belief that he was signing only as a witness in some other client / persons agreement.

6. Upon acquiring knowledge about this agreement of sale, he instituted Suit in City Civil Court being Suit No.1126 of 2012. He also instituted another Suit being Suit No.3435 of 2013 in the City Civil Court challenging the alleged agreement for sale. On 01.02.2013, **Bhorkars** instituted proceedings under Section 24 of the Act before the Competent Authority against **Jolly**. Initially, **Jolly** filed application under Order VII, Rule 11 of the Code of Civil Procedure, 1908 (for short 'C.P.C.') for rejection of the application on the ground that the Competent Authority has no jurisdiction to entertain and try the

proceedings on the ground that there is no relationship of licensor and licensee between the parties. **Bhorkars** filed reply opposing that application. The application filed by **Bhorkars** was rejected by the Competent Authority on 09.05.2013. Aggrieved by that decision, they instituted Revision before the Commissioner, which was rejected by order dated 08.08.2014. Writ Petition (St.) No.11328 of 2014 was instituted by them in this Court. This Court allowed that Petition on 03.08.2015 and set aside the orders passed by the Competent Authority and remitted the case to the Competent Authority.

7. After remand, by order dated 11.05.2016 (first order), the Competent Authority rejected leave to defend application filed by **Jolly**. On the same day, by the second order, application filed by **Bhorkars** under Section 24 was allowed. Aggrieved by that decision, **Jolly** instituted Revision Application before the Commissioner, which was rejected on 05.08.2017. The Competent Authority has issued warrant of possession on 10.08.2017. The warrant was executed on 14.08.2017.

8. In support of Petition instituted by **Jolly**, Mr. Motkari strenuously contended that the Authorities below were not justified in passing the impugned orders. He submitted that there is no relationship of licensor and licensee between **Bhorkars** and **Jolly**. There is no written leave and licence agreement on record. **Jolly** never executed any leave and licence agreement in favour of **Bhorkars**. He further submitted that **Jolly** was inducted in the suit premises by **Uchil** on the basis of tenancy agreement dated 03.08.2009. The letter dated 15.09.2010 produced on record is a forged and fabricated document. The Competent Authority committed serious error in holding that though there is no leave and licence agreement between the parties, nonetheless, the letter dated 15.09.2010 and other circumstances spells out relationship of licensor and licensee between **Bhorkars** on one hand and **Jolly** on the other. He submitted

that **Jolly** instituted R.A.D.Suit No.610 of 2016 for declaration of his tenancy rights in the Small Causes Court and that Suit is pending. He submitted that the Authorities below were, therefore, not justified in passing the impugned orders.

9. In support of Petition instituted by **Uchil**, Ms Khan submitted that taking undue advantage of the trust reposed by **Uchil** in **Bhorkars**, they got the alleged agreement of sale executed on 06.09.2010 from him. **Uchil** has instituted Suits in the City Civil Court in the year 2012 and 2013 for perpetual injunction as also for setting aside the registered agreement of sale dated 06.09.2010 and the same are pending. She submitted that though application for intervention was made before the Commissioner, the same was not allowed. Not only that, the Commissioner passed order on 05.08.2017 and immediately thereafter, within 5 days, on 10.08.2017, the Competent Authority issued warrant of possession and **Jolly** was dispossessed on 14.08.2017. She submitted that this is in the teeth of Section 45 of the Act.

10. On the other hand, Mr. Rajeshirke supported the impugned orders. He invited my attention to -

(1) paragraph 7 of the plaint in Suit No.1126 of 2012 instituted by **Uchil** in City Civil Court against **Bhorkars** (defendants No.1 and 2), Secretary / Chairman of Oshiwara Gulmohur C.H.S. (for short 'Society') (defendant No.3) and Chief Executive Officer / V.P. MHADA (defendant No.4) *inter alia* praying for perpetual injunction restraining defendants No.1 and 2 (**Bhorkars**) from forcibly dispossessing **Uchil** from the suit premises; restraining defendants No.3 and 4 from transferring the suit premises in favour of **Bhorkars**.

(2) paragraph 19 of the plaint in S.C.Suit No.3435 of 2013 instituted by **Uchil** in City Civil Court against **Bhorkars** (defendants No.2 and 3) and **Society** *inter alia* praying for declaration that the alleged agreement

of sale dated 06.09.2010 is illegal, null and void and not binding on him and the same may stand cancelled.

(3) application dated 14.03.2013 filed by Jolly under Order VII, Rule 11 of C.P.C. before the Competent Authority for dismissal of the plaint;

(4) letter dated 15.09.2010 addressed by **Jolly** to **Bhorkars**.

11. Mr. Rajeshirke submitted that in both the Suits, Uchil specifically contended that he had recognized Jolly as an associate member in the **Society** since 2007. In paragraph 5 of application dated 14.03.2013, **Jolly** contended that **Bhorkars** have identified **Uchil** as erstwhile owner, who is original allottee of the suit premises. Under the implied agreement of licence, **Uchil** had allowed **Jolly** to occupy the suit premises. In short, he submitted that at no point of time, alleged tenancy agreement dated 03.08.2009 was referred by **Uchil** and **Jolly** in these proceedings. The alleged tenancy agreement dated 03.08.2009 is a forged and fabricated document. He submitted that after considering the material on record, the Authorities below have concurrently held that there is a relationship of licensor and licensee between **Bhorkars** on one hand and **Jolly** on the other.

12. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. It is not in dispute that **Bhorkars** have instituted proceedings under Section 24 of the Act on the basis of the registered agreement of sale dated 06.09.2010 executed by **Uchil** in their favour. It is also not in dispute that **Uchil** instituted Suit in the City Civil Court for cancellation of the said instrument and the said is pending. **Uchil** has also instituted Suit in the City Civil Court for perpetual injunction. The said Suit is also pending. As of today, the registered agreement of sale executed by him in favour of **Bhorkars** is not yet set aside. After service of summons of

proceedings under Section 24, **Jolly** filed application under Order VII, Rule 11 of C.P.C. instead of filing application for leave to defend. It was contended that there is no relationship of licensor and licensee between the parties, and therefore, the Competent Authority has no jurisdiction. I have already referred to the earlier round of litigation. Eventually, in pursuance of order dated 03.08.2015 passed by this Court, matter was remitted to the Competent Authority. After remand, **Jolly** contended that **Uchil** made **Jolly** associated member and executed Memorandum of Understanding (MoU) dated 12.01.2007 in his favour. As **Uchil** was unable to return his money, parties entered into fresh MoU dated 17.03.2009 to transfer the suit premises in favour of **Jolly**. It is contended that on 03.08.2009, **Uchil** had let out the suit premises on tenancy basis to him.

13. A perusal of the application filed by **Jolly** under Order VII, Rule 11 of C.P.C., and in particular paragraph 5 thereof shows that **Jolly** contended that **Uchil** had allowed him to occupy the suit premises under **implied agreement of licence**. The application is filed on 14.03.2013. In other words, no reference is made to the tenancy agreement of 03.08.2009. It is also material to note that in paragraph 7 of Suit No.1126 of 2012 filed by **Uchil**, it is asserted that **Uchil** had recognized **Jolly** as an associate member in the **Society**. The same fact is also reiterated in S.C.Suit No.3435 of 2013, and in particular paragraph 18. In both the Suits, **Uchil** did not make reference to the alleged tenancy agreement dated 03.08.2009. Thus, prima facie, the alleged tenancy agreement dated 03.08.2009 is a fabricated document. It is also not in dispute that the Suit instituted by **Uchil** challenging the registered agreement of sale dated 06.09.2010 is still pending. In view thereof, at this stage, the Competent Authority is justified in proceeding on the premise that **Bhorkars** are owners of the suit premises and that **Jolly** was occupying the suit premises as a licensee. The Competent Authority

also relied upon letter dated 15.09.2010 and other circumstances and observed that the said letter was not denied by **Jolly**. This is sufficient to draw inference that there is a relationship of licensor and licensee between the parties. The Competent Authority rejected the application for leave to defend on the ground that no triable issues were raised by **Jolly**. The Competent Authority, therefore, rejected the application for leave to defend. In view of Section 43(4)(a), on the same day, application filed by **Bhorkars** under Section 24 of the Act was allowed. **Jolly** carried the matter in revision before the Commissioner. The Commissioner also considered the arguments advanced on behalf of **Uchil** as intervenor, and after considering the material on record, rejected the application. The Commissioner also considered letter dated 15.09.2010, which was not denied by **Jolly**. In paragraph 7, the Commissioner observed that **Bhorkars** have placed on record agreement of sale dated 06.09.2010 to prove ownership. The Commissioner ultimately held that the order passed by the Competent Authority does not suffer from any infirmity. Accordingly, the Commissioner rejected revision application.

14. Section 24(3) of the Act lays down that 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. The Authorities below have concurrently held that there is a relationship of licensor and licensee between **Bhorkars** on one hand and **Jolly** on the other. In view thereof, I do not find that the Authorities below, and in particular, Commissioner committed any error in not entertaining the claim made by the intervenor. In view thereof, I do not find that any case is made out for interfering with the impugned orders at the instance of **Uchil**. Writ Petition No.4863 of 2018 accordingly stands dismissed.

15. In so far as Writ Petition No.3057 of 2018 is concerned, the Authorities below rightly held that there is a relationship of licensor and licensee between **Bhorkars** on one hand and **Jolly** on the other. It is however material to note that the Commissioner rejected revision application on 05.08.2017. Immediately thereafter within 5 days, the Competent Authority issued warrant on 10.08.2017 and the possession was taken over on 14.08.2017. Section 45 of the Act reads thus,

45. Effect of refusal or failure to comply with order of eviction - If any person refuses or fails to comply with the order of eviction made under section 43 within thirty days of the date on which it has become final, the Competent Authority or any other officer duly authorized by the Competent Authority in this behalf, may evict that person from, and take possession of, the premises and deliver the same to the landlord and for that purpose, use such force as may be necessary.

16. A perusal of the above provision shows that if any person refuses or fails to comply with order of eviction made under Section 43 within 30 days of the date on which it has become final, the Competent Authority or any other officer duly authorized by the Competent Authority in this behalf, may evict that person from, and take possession of, the premises and deliver the same to the landlord and for that purpose, use such force as may be necessary. In my opinion, taking over possession on 14.08.2017 was clearly in the teeth of Section 45 of the Act. In view thereof, **Bhorkars** shall pay compensation @ Rs.10,000/- per month to **Jolly** within 15 days from today.

17. Mr. Motkari submits that **Jolly** has deposited amount of Rs.2,52,000/-. The same shall be adjusted and the balance amount shall be paid to **Bhorkars**. Subject to this, Writ Petition No.3057 of 2018 stands dismissed. The learned Judge of the Small Causes Court, who seized of the Suit for declaration of tenancy rights, shall decide the Suit on the basis of material on record and in accordance with law,

uninfluenced by the observations made in the impugned orders and in this order. All contentions of the parties in that regard are expressly kept open. Petitions are accordingly disposed of with no order as to costs.

(R. G. KETKAR, J.)

Minal Parab