

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10004 OF 2018

Milind Kashinath Mahadik ... Petitioner
Vs.
Kanchan Vinayak Chiplunkar ... Respondent

Mr. Mahendra M. Agavekar for Petitioner.
Mr. Yogiraj B. Purwant for Respondent.

CORAM : R. G. KETKAR, J.
DATE : OCTOBER 09, 2018

P.C. :

Heard Mr. Agavekar, learned Counsel for the petitioner and Mr. Purwant, learned Counsel for the respondent at length.

2. Leave to amend so as to change numbering of prayer clause (b) of the Petition is granted. Amendment shall be carried out forthwith.

3. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the order dated 27.07.2018 passed by the Commissioner, Pune Division, Pune (for short 'Commissioner') in Revision Application No.50 of 2018. By that order, the Commissioner dismissed the Revision Application preferred by the petitioner and confirmed the order passed by the Competent Authority (Rent Control Act), Pune Division, Pune (for short 'Competent Authority'). In clause 2 of the operative part of the order, the Commissioner has referred to the order dated 12.09.2016 which is obviously a typographical error. The Commissioner has confirmed the order dated 05.01.2018 passed by the Competent Authority whereby, the application made by the petitioner for leave to defend proceedings filed by the respondent under the Maharashtra Rent Control Act, 1999 (for short 'Act') was rejected.

4. The Petition was heard on 19.09.2018. On that day, upon taking instructions from the petitioner, who was present in the Court, statement was made that within two weeks, petitioner will deposit licence fee for the period from 01.04.2016 to 30.09.2018 (excluding for the month of August 2016) @ Rs.8,000/- per month in this Court. In view thereof, subject to the petitioner depositing Rs.2,32,000/- for the period from 01.04.2016 to 30.09.2018 (excluding for the month of August, 2016) within two weeks, ad-interim order in terms of prayer clause (bi) was granted. It was made clear that if the petitioner does not comply this order, ad-interim order shall stand vacated without further reference to the Court.

5. At the outset, Mr. Agavekar submitted that the petitioner has not complied order dated 19.09.2018 by depositing Rs.2,32,000/- in this Court. He submitted that the Authorities below committed serious error in declining to grant leave to defend. He submitted that there is no relationship of licensor and licensee between the parties. Petitioner is a tenant in respect of the premises in question. The Authorities below, therefore, should have granted leave to defend.

6. On the other hand, Mr. Purwant supported the impugned orders. He submitted that it is not in dispute that registered leave and licence agreement was executed between the parties on 10.08.2010. The period of licence was from 01.08.2010 to 31.05.2012. Subsequently, another registered leave and licence agreement was executed on 01.10.2015 for a period from 01.09.2015 to 31.07.2016. He submitted that as the agreements of leave and licence are registered, the contention raised by the petitioner that there is no relationship of licensor and licensee and that he is a tenant cannot be accepted. The Authorities below have considered the provisions of the Act, and therefore, 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. A perusal of the record shows that two registered leave and licence agreements were entered into by and between the parties. Firstly on 10.08.2010 and secondly on 01.10.2015. In view of explanation (b) to Section 24, agreement of licence in writing is a conclusive evidence of the facts stated therein. Mr. Agavekar relied upon the following decisions:

- a. ***Precision Steel and Engg. Works Vs. Prem Deva*, (1982) 3 SCC 270; and**
- b. ***Indrajeet Kaur Vs. Nirpal Singh*, (2001) 1 SCC 706.**

8. In so far as decision in **Precision Steel and Engg. Works** (*supra*) is concerned, the said judgment is considered by this Court in **AMI Merchandising Pvt. Ltd vs. State Of Maharashtra**, 2014 (3) Mh.L.J. 257. In view thereof, I do not find that the reliance placed by Mr. Agavekar on the decision in **Precision Steel and Engg. Works** (*supra*) in any way advances the petitioner's case. In so far as the decision in **Indrajeet Kaur** (*supra*) is concerned, it lays down that if the tenant raises triable issue, Statute itself places duty on the Rent Controller to grant leave. In that decision, decision in **Precision Steel and Engg. Works** (*supra*) was also considered by the Apex Court. In my opinion, the said decision is also not applicable in the present case in view of the express language employed in explanation (b) to Section 24 of the Act. Apart from this, as the petitioner has not complied order dated 19.09.2018 by depositing Rs.2,32,000/-, no case is made out for interfering with the impugned orders. Hence, Petition fails and the same is dismissed.

(R. G. KETKAR, J.)