

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4409 OF 2019

Hafiza Ismail Surve through her Constituted
Attorney Hasmitbi Ismail Surve ... Petitioner
Vs.
Surekha Jain and another ... Respondents

Mr. Shailesh Pal i/b. Mr. Pratap Singh for Petitioner.
Mr. Shreeprasad M. Parab for Respondent No.1.

CORAM : R. G. KETKAR, J.
DATE : JUNE 26, 2019

P.C. :

Heard Mr. Pal, learned Counsel for the petitioner and Mr. Parab, learned Counsel for the respondent No.1 at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner has challenged the - (i) order dated 07.04.2018 on application for leave to defend (first order), (ii) order dated 07.04.2018 on application under Section 24 of the Maharashtra Rent Control Act, 1999 (for short 'Act') (second order) passed by the Competent Authority (Rent Act), Konkan Division, Mumbai (for short 'Competent Authority') as also (iii) order dated 17.12.2018 passed by the Additional Commissioner, Konkan Division, Mumbai (for short 'Commissioner') in Revision Application No.355 of 2018. By the first order dated 07.04.2018, the Contempt Authority rejected the application made by the petitioner for leave to defend on the ground that summons was served on the petitioner on 09.10.2017. As per Section 43(4)(a) of the Act, the application for leave to defend was required to be filed within 30 days from the date of service of summons. The application for leave to defend was required to be filed on 07.11.2017. The application for

leave to defend was however filed on 08.11.2017. The Competent Authority rejected the application on the ground that it has no power to condone the delay. On the same day, by the second order, the Competent Authority allowed the application filed by the respondent under Section 24 of the Act and directed the petitioner to handover vacant and peaceful possession of flat No.603, 6th floor, Diyon Shelters, building No.1, S. G. Barve Marg, Kurla (East), Mumbai (for short 'suit premises'). The petitioner is further directed to pay to the respondent double the rate of monthly licence fees being Rs.24,000 x 2 = Rs.48,000/- from 30 days of termination of agreement i.e. 13.01.2017 from the date leave and licence agreement stands terminated till the date of handing over vacant possession of the suit premises. Aggrieved by these orders, petitioner preferred Revision under Section 44 of the Act, which was rejected by the Commissioner.

3. It is not in dispute that the parties entered into registered leave and licence agreement on 13.01.2016. The petitioner was inducted as a licensee in the suit premises for a residential use for a period of 11 months commencing from 14.01.2016 and ending on 13.12.2016. The compensation agreed between the parties was Rs.24,000/- per month and the refundable deposit agreed was Rs.1,00,000/-, interest free. As the petitioner did not handover possession after expiry of licensed period, respondent No.1 filed application under Section 24 of the Act for recovery of possession. The Competent Authority rejected the application for leave to defend and allowed the application under Section 24 of the Act filed by the respondent No.1.

4. Mr. Pal submitted that there is delay of only 1 day in filing the application for leave to defend. He submitted that the Competent Authority should not have rejected the application for leave to defend on

that ground.

5. It is not possible to accept this submission. In the case of ***Prakash H. Jain vs Ms. Marie Fernandes, AIR 2003 SC 4591***, the Apex Court has held that the Competent Authority is not a Court and therefore, Indian Limitation Act, 1963 does not apply. In view thereof, I do not find that the Competent Authority committed any error in rejecting the application for leave to defend on the ground that it is barred by limitation. On the same day, the Competent Authority has allowed application under Section 24 of the Act. Clause (iii) of the operative part of the second order reads thus,

“(iii) The Respondent (petitioner herein) is hereby directed to pay to the applicant (respondent No.1 herein), double the rate of monthly licence fees being Rs.24,000/- x 2 = Rs.48,000/- from 30 days of termination of Agreement i.e. 13/01/2017 from the date the leave and licence agreement stands terminated till the date vacant possession of the said application premises is delivered to applicant (respondent No.1 herein).”

6. By order dated 17.12.2018, Commissioner rejected the Revision. During the course of hearing of this Petition, I called upon the Advocate for the petitioner to take instructions from the petitioner as to whether she is ready and willing to deposit double the rate of monthly licence fees i.e. @ Rs.48,000/-. Mr. Pal states that Ms Hasmitbi Ismail Surve, Constituted Attorney of the petitioner is present in the Court. He has tendered photocopy of the identity card issued by the Election Commission of India. The same is taken on record and marked 'X' for identification. Mr. Pal, on instructions, states that petitioner is not in a position to pay the licence fees even at the rate of Rs.24,000/- which is the agreed monthly licensed fees. In view thereof also, no case is made out for interfering with the impugned orders. Petition fails and the same is dismissed.

(R. G. KETKAR, J.)