

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO. 3893 OF 2018

K.S. Madhava (since deceased)	]	
through his Heirs and Legal Representatives	]	
Rakesh Kottary	]	Petitioner
Vs.		
Sujata Ramesh Golha and another.	]	Respondents

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Mr. Ganesh S. Vaidya, learned Counsel for the Petitioner.
Ms. Latika Chitre, learned Counsel for Respondent No.1.

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CORAM : R.G. KETKAR, J.

DATE : 22ND JANUARY, 2019.

P.C.

Heard Mr. Vaidya, learned Counsel for the petitioner and Ms. Chitre, learned Counsel for respondent No.1 at length.

2. Leave to delete respondent No.2 is granted as respondent No.2 is a formal party and no relief is claimed against it. Amendment shall be carried out within one week from today.

3. This Petition takes exception to the order dated 2nd December, 2017 passed by the Competent Authority (Rent Act) Konkan Division, Mumbai (for short 'Competent Authority') in Case No.14 of 2007. By that order, the Competent Authority rejected the application made by the petitioner under section 24 of the Maharashtra Rent Control Act, 1999 (for short 'Act') on the ground that it cannot entertain the application as there is no leave and licence agreement between the parties for the purposes of section 24 of the Act.

4. Rule. Ms. Chitre waives service. Having regard to the narrow controversy raised in this Petition as also at the request and by consent of learned Counsel for the parties, Rule is made returnable forthwith and Petition is taken up for final hearing.

5. The petitioner instituted proceedings under section 24 of the Act before the Competent Authority, *inter alia*, contending that Flat No.1786 (404), Building No.50, A-Wing, Omkar Co-operative Housing society Limited, Tilak Nagar, Chembur, Mumbai – 400 089 (for short 'suit premises') was given to the first respondent on leave and licence basis. Leave and licence agreement was executed on 23rd June, 2006 for a period of 3 months from 23rd June, 2006 till 22nd September, 2006. The first respondent did not vacate the suit premises. He issued notice dated 8th January, 2007 calling upon the first respondent to vacate and hand over possession of the suit premises. Respondent No.1 neither vacated the suit premises nor replied the notice. He, therefore, filed proceedings under section 24 of the Act.

6. After service, respondent No.1 appeared and filed application for leave to defend dated 19th June, 2007 along with documents, *inter alia*, contending that though the agreement titled as leave and licence agreement was executed, it was not intended to be acted upon. The petitioner has agreed to sell the suit premises for consideration of Rs.14,70,000/-. Thus, in substance, the transaction between the parties was a pure transaction of sale and not leave and licence agreement. Defendant No.1 had paid Rs.1,00,000/- at the time of executing the document. By order dated 29th November, 2007, the Competent Authority granted leave to defend. In pursuance thereof, on 7th January, 2008, respondent No.1 filed written statement once again reiterating her contentions. Respondent No.1 contended that she did not sign the said agreement. She also relied on MOU dated 24th May, 2006 signed by the parties

for selling the suit premises. On 22nd January, 2008, the Competent Authority framed 6 issues and the parties were directed to adduce evidence. During pendency of the proceeding, original applicant expired on 7th January, 2008 and legal representatives were brought on record. No oral evidence was adduced by the respondent. By the impugned order, the Competent Authority held that it cannot entertain the application as there is no leave and licence agreement between the parties for the purposes of section 24 of the Act.

7. In support of this Petition, Mr. Vaidya has invited my attention to leave and licence agreement dated 23rd June, 2006 entered into between the parties and in particular recital No.2 and clauses 1 to 14 of the agreement. He submitted that ignoring all these clauses, only on the basis of clause 15, the Competent Authority came to the conclusion that transaction between the parties was for sale of the suit premises and, therefore, it is not leave and licence agreement. He relied on explanation (b) to section 24 of the Act to contend that an agreement of licence in writing is conclusive evidence of the fact stated therein. He further submitted the Competent Authority committed serious error in ignoring rest of the clauses of leave and licence agreement rested conclusions only based upon clause 15 of the agreement. He submitted that while considering the contract, all clauses are required to be considered and not one clause in isolation. He submitted that respondent No.1 has not filed suit for specific performance till date. He, therefore, submitted that the impugned order deserves to be set aside and the proceedings are required to be restored to the file of the Competent Authority.

8. Mr. Vaidya states that in case the impugned order is set aside and proceedings are restored to the file of the Competent Authority, the petitioner will file affidavit of evidence within two weeks from today. He further states that the petitioners have no objection for sending the document titled as leave

and licence agreement along with admitted signatures of the first respondent for the opinion of handwriting expert.

9. On the other hand, Ms. Chitre supported the impugned order. She has raised preliminary objection to the maintainability of the Petition. She submitted that the petitioner has an equal efficacious alternate remedy of filing revision before the Competent Authority. She submitted that the Petition deserves to be dismissed on the ground of maintainability. She submitted that on 24th May, 2006, MOU was entered into between the parties wherein original petitioner K.S. Madhava had agreed to sell the suit premises to respondent No.1. Respondent No.1 had paid Rs.25,000/- as token amount to K.S. Madhava vide cheque No.164509 of H.D.F.C. Bank. She submitted that real intention between the parties was to sell the suit premises to respondent No.1. That apart, she submitted that the purported leave and licence agreement does not bear signature of respondent No.1. Respondent No.1 has not signed the said document and her signatures are fake signatures. The said document be sent to handwriting expert for verifying the signature. Apart from that, she submitted that though the leave and licence agreement is notarized document, it does not bear serial number in the register maintained by the Notary. She submitted that in fact, several applications were filed before the Competent Authority for sending the leave and licence agreement for the opinion of handwriting expert.

10. I have considered the rival submissions advanced by the learned Counsel for the parties. I have also perused the material on record. Ms. Chitre submitted that the petitioner has an equally efficacious alternate remedy of filing revision before the Competent Authority. I do not find any merit in this submission. Basically, I am satisfied that approach of the Competent Authority was wholly perverse. In case of **Surya Dev Rai Vs. Ram Chander Rai, (2003) 6 Supreme Court Cases 675**, the Apex Court has dealt with scope of Article

227 of the Constitution of India and has observed that in appropriate case, the High Court can exercise *suo motu* powers under Article 227 of the Constitution of India. I, therefore, overrule preliminary objection raised by Ms. Chitre about maintainability of the Petition.

11. In case of **Provash Chandra Dalui Vs. Biswanath Banerjee, 1989 Supp. (1) Supreme Court Cases 487**, the Apex Court was considering the provisions of Calcutta Thika Tenancy Act, 1949 in the context of registered lease deed dated 26th September, 1946. In paragraph 10, it was observed thus;

“10. 'Ex praecedentibus et consequentibus optima fit interpretatio'. The best interpretation is made from the context. Every contract is to be construed with reference to its object and the whole of its terms. The whole context must be considered to ascertain the intention of the parties. It is an accepted principle of construction that the sense and meaning of the parties in any particular part of instrument may be collected 'ex antecedentibus et consequentibus', every part of it may be brought into action in order to collect from the whole uniform and consistent sense, if that is possible. As *Lord Davey said in N.E. Railway Co. v. Hastings*:

“...the deed must be read as a whole in order to ascertain the true meaning of its several clauses, and .. the words of each clause should be so interpreted as to bring them into harmony with the other provisions of the deed if that interpretation does no violence to the meaning of which they are naturally susceptible...”

In construing a contract the court must look at the words used in the contract unless they are such that one may suspect that they do not convey the intention correctly. If the words are clear, there is very little the court can do about it. In the construction of a written instrument it is legitimate in order to ascertain the true meaning of the words used as if that be doubtful it is legitimate to have regard to the circumstances surrounding their creation and the subject-matter to which it was designed and intended they should apply”.

12. Applying the principles laid down by the Apex Court in the aforesaid decision with the facts of the present case and after perusing the impugned order, it is evident that the Competent Authority has only considered clause 15 of the leave and licence agreement while arriving at conclusion that transaction between the parties was not leave and licence agreement but was agreement for sale. In my opinion, approach of the Competent Authority was wholly perverse. The Competent Authority ignored clauses 1 to 14 of the leave and licence agreement while arriving at this conclusion. While considering the proceeding under section 24 of the Act, the Competent Authority has also to bear in mind explanation (b) to section 24 of the Act which lays down that licence in writing is conclusive evidence of fact stated therein.

13. In view thereof, this is a fit case for setting aside the impugned order thereby restoring the proceedings before the Competent Authority. In the result, the Petition is disposed of in the following terms;

- [1] The impugned order dated 2nd December, 2017 passed by the Competent Authority is set aside.
- [2] Case No.14 of 2007 is restored to its original position before the Competent Authority.
- [3] The Competent Authority shall send original leave and licence agreement along with admitted signatures of respondent No.1 for the opinion of handwriting expert.
- [4] The petitioner shall file affidavit of evidence before the Competent Authority within two weeks from today and serve copy on the other side during this period.
- [5] The parties are at liberty to adduce evidence before the Competent Authority.

- [6] All contentions of the parties are expressly kept open.
- [7] The Competent Authority shall dispose of the proceeding as expeditiously as possible and, in any case, within six months from the receipt of authenticated copy of this order.
- [8] Rule is made absolute accordingly with no order as to costs.

[R.G. KETKAR, J.]