

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO.11267 OF 2018

Ganesh Shinde and another.	]	Petitioners
Vs.		
Rahul Kishor Parkar	]	Respondent

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Mr. Nitesh V. Bhutekar, learned Counsel for the Petitioners.

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CORAM : R.G. KETKAR, J.

DATE : 27TH MARCH, 2019.

P.C.

Heard Mr. Bhutekar, learned Counsel for the petitioners at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged the order dated 23rd September, 2016 passed by the Competent Authority, Konkan Division, Mumbai (for short, 'Competent Authority') in Case No.30 of 2010 as also the order dated 25th July, 2017 passed by the Additional Commissioner, Konkan Division, Mumbai (for short, 'Commissioner') in Revision No.1273 of 2016. By order dated 23rd September, 2016, the Competent Authority allowed the application made by the respondent under section 24 of the Maharashtra Rent Control Act, 1999 (for short 'Act') and directed the petitioners to hand over vacant and peaceful possession of Flat No.105, 1st floor, Charkop Vanshvel Co-operative Society Ltd., Plot No.18, RDP-1, Charkop, Kandivali (West), Mumbai – 400 067 (for short 'suit premises;') to the respondent. The petitioners were further directed to pay to the respondent Rs.10,000/- per month from 1st April, 2010 till vacant possession of the suit premises is handed over to the respondent. Aggrieved by this decision, the petitioners instituted Revision Application under section 44 of

the Act before the Commissioner. By order dated 25th July, 2017, the Commissioner rejected the revision application. It is against these orders, the petitioners have instituted the present Petition.

3. In support of this Petition, Mr. Bhutekar submitted that the petitioners agreed to purchase Flat No.312 in Charkop Vanshvel Co-operative Housing Society Limited from one Suryakant Bhivanji Tawade through the father of the respondent, Kishor Parkar. Father of the respondent was dealing with said Flat No.312. He also received consideration from the petitioners in respect of Flat No.312. He submitted that after purchase of Flat No.312, the petitioners took up some civil interior work in the said flat. Till such time, said civil work was to be completed, father of the respondent provided alternate temporary accommodation to the petitioners i.e the suit premises. However, father of the respondent and owner of Flat No.312, Shri Suryakant Bhivanji Tawade arbitrarily revoked the agreement of sale of Flat No.312 to the petitioners. They practiced fraud upon the petitioners by taking part consideration of the said flat and revoking the sale agreement.

4. Mr. Bhutekar submitted that the Authorities below failed to appreciate the evidence of Ashokbhai Bhagchandani, who worked as contractor in carrying out civil work in Flat No.312. The Authorities below committed serious error in holding that evidence of that witness is not admissible. The Authorities below also failed to appreciate that the petitioners have lodged Criminal Complaint against the respondent and his father and others before the learned Metropolitan Magistrate, Borivali for cheating the petitioners while dealing with Flat No.312. After expiry of the leave and licence agreement, the respondent instituted the proceeding under section 24 of the Act. He also submitted that the Authorities below have passed the orders without application of judicious mind. The Petition, therefore, requires consideration.

5. I have considered the submissions advanced by Mr. Bhutekar. I have also perused the material on record. The Petition was heard on 5th March, 2019. On instructions, Mr. Bhutekar submitted that within two weeks from the date of the order, the petitioner will deposit amount @ Rs.10,000/- per month from 1st April, 2010 till 28th February, 2019 in this Court and will go on depositing Rs.10,000/- per month from 1st March, 2019 onwards. In view thereof, subject to the petitioners depositing entire arrears, ad-interim order in terms of prayer clause (iv) was granted. It was made clear that if the petitioners fail to deposit the amount within two weeks from the date of the order, ad-interim order shall stand vacated without further reference to the Court. Office remark shows that the petitioners have not deposited the amount as per the order dated 5th March, 2019. The said fact is also not disputed by Mr. Bhutekar.

6. Coming to the merits of the present case, it is not in dispute that registered leave and licence agreement was executed between the parties on 16th October, 2009 for a period of 11 months commencing from 1st May, 2009 to 31st March, 2010. The petitioners were allowed to use and occupy the suit premises on monthly compensation of Rs.5000/- and Rs.50,000/- as refundable security deposit. As the petitioners did not hand over possession after expiry of licence period, the respondent instituted proceeding under section 24 of the Act. After service of the summons, the petitioners filed application for leave to defend. By order dated 15th October, 2010, the Competent Authority granted leave to defend. The parties thereafter adduced evidence. After considering the evidence on record, the Competent authority allowed the application under section 24 of the Act. The Competent Authority noted that the respondent is legal and absolute owner of the suit premises in pursuance of the documents such as Share certificate, maintenance bill, Agreement for Sale, Electricity bill. After considering the evidence on record,

the Competent Authority concluded that registered leave and licence agreement was admitted by the petitioners. The petitioners were inducted in the suit premises in pursuance of the leave and licence agreement. Thus, there is relationship of licensor and licensee between the parties. As the petitioners breached the terms and conditions of the agreement and after expiry of the licence, the petitioners failed to vacate the suit premises, the Competent Authority directed them to hand over vacant and peaceful possession of the suit premises to the respondent.

7. In so far as order of the Commissioner is concerned, the Commissioner noted that the petitioners admitted execution of leave and licence agreement in respect of the suit premises. The proceedings in respect of Flat No.312 are pending in the City Civil Court, Mumbai. The Commissioner upheld the order passed by the Competent Authority. Mr. Bhutekar advanced submissions as regards father of the respondent agreeing to sell Flat No.312 and revoking the said agreement. In my opinion, Authorities constituted under the Act cannot go into this issue. It is settled principle of law that in order to attract section 24 of the Act, following conditions are required to be fulfilled as laid down by this Court in **Dinkar Keshav Deshmukh Vs. Vasantdada Sugar Institute, Pune, (1997) 1 Mh. L. J. 188;**

- [1] the licensor should be the owner of the flat.
- [2] the premises must have been given on licence
- [3] period of licence should have expired.
- [4] the licenced agreement may be in writing or oral.

In the present case, all these conditions are fulfilled. That apart, Explanation (b) to section 24 lays down that an agreement of licence in writing is conclusive evidence of the facts stated therein. In the present case, admittedly, agreement of leave and licence is registered instrument. In view thereof, the Authorities below, therefore, are fully justified in passing the impugned orders.

That apart, as noted earlier, the petitioners have also not complied the order dated 5th March, 2019. Hence, no case is made out for invocation of powers under Article 227 of the Constitution of India. The Petition fails and the same is dismissed.

[R.G. KETKAR, J.]