

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7866 OF 2018

Rajkumar Rangnath ... Petitioner
Vs.
M/s. Alish Life Saving Impex Private Limited
through its Director Ms Poonam Mishra and others ... Respondents

Mr. Vishal Kanade i/b. Ms Padma S. Shelatkar for Petitioner.
Mr. P. G. Sarda for Respondent No.1.
Mr. P. P. Pujari, AGP for Respondents No.2 and 3-State.

CORAM : R. G. KETKAR, J.
DATE : MARCH 25, 2019

P.C. :

Heard Mr. Kanade, learned Counsel for the petitioner, Mr. Sarda, learned Counsel for the respondent No.1 and Mr. Pujari, learned AGP for the respondents No.2 and 3-State at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner has challenged the order dated 07.02.2018 passed by the Additional Commissioner, Konkan Division, Mumbai (for short 'Commissioner') in Revision No.954 of 2017. By that order, the Commissioner allowed the Revision Application preferred by the respondent No.1 under Section 44 of the Maharashtra Rent Control Act, 1999 (for short 'Act') and set aside the order dated 10.08.2017 passed by the Competent Authority, Konkan Division, Mumbai (for short 'Competent Authority') in Case No.4 of 2016 and remitted the matter to the Competent Authority. By order dated 10.08.2017, the Competent Authority rejected the application made by the respondent No.1 for leave to defend. After rejecting the application for leave to defend, on the same day, the Competent Authority allowed the application made by

the petitioner under Section 24 of the Act and directed the respondent No.1 to handover vacant and peaceful possession of flat No.501, 5th floor, Oshiwara Mayfair Co-operative Housing Society Limited, MHADA Complex, Andheri (West), Mumbai 400 053 (for short 'suit premises') to the petitioner. Respondent No.1 is directed to pay to the petitioner Rs.99,000/- per month from January 2016 till vacant possession of the suit premises is delivered to the petitioner.

3. Rule. Learned Counsel for respective respondents waive service. In view of the order dated 26.10.2018, Rule is made returnable forthwith and the Petition is taken up for final hearing.

4. In support of this Petition, Mr. Kanade submitted that the registered leave and licence agreement was entered into between the petitioner and respondent No.1 on 16.10.2014. The period of licence was 33 months commencing from 16.10.2014 and expiring on 14.08.2016. He submitted that as per clause (3) of the agreement, respondent agreed to pay to the licensor a sum of Rs.45,000/- per month for the first period of 11 months and for the second period of 11 months, respondent agreed to pay Rs.49,500/- per month. For the remaining period of 11 months, respondent agreed to pay compensation @ Rs.54,450/- per month. The licence fee was to be paid within 5 days of its due date in every English calendar month in advance by cheque. In case the payment of monthly compensation is not made within five days of its due date, respondent No.1 agreed to pay an additional sum of Rs.2,000/- for such delay and if not paid, the same was to be adjusted from the security deposit. He submitted that clause (10) provided that respondent No.1-licensee shall deposit with the licensor a sum of Rs.2,00,000/- being a security deposit, free of interest, out of which a sum of Rs.1,75,000/- was to be returned to the licensee on expiry of the

agreement or on notice of one month in advance for vacation of the premises after the lock in period of eleven months and against the vacant and peaceful possession of the suit premises, after deducting the arrears of monthly compensation, cost of damages, etc. if any. The balance amount of Rs.25,000/- was to be retained by the licensor for the payment of the electricity / telephone bills upto the date of occupation of the suit premises by the respondent No.1 and after deducting the amount of electricity bills / telephone bills / cable TV charges / parking charges / Mahanagar Gas bills, if any. The amount was to be refunded only after payment of these bills.

5. Mr. Kanade submitted that petitioner issued notice on 07.12.1015 inter alia informing the respondent that they have not paid 4 ½ months' compensation charges for the months of August to December 2015, and thus, they are in arrears of Rs.2,74,000/-. Respondent No.1 was called upon to pay arrears of Rs.2,74,000/- and also to vacate the suit premises within one month from the date the receipt of the notice and thereafter receive back deposit amount after deduction of necessary dues, arrears, outstanding, etc. He submitted that the respondent No.1 neither paid the compensation nor complied the requisition contained in the notice. The petitioner, therefore, instituted proceedings under Section 24 of the Act before the Competent Authority on 11.01.2016. The respondent filed affidavit for leave to defend. By order dated 10.08.2017, the Competent Authority rejected the application for leave to defend. On the same day, the Competent Authority allowed the application made by the petitioner under Section 24 of the Act and directed the respondent No.1 to handover possession of the suit premises an also to pay Rs.99,000/- per month from January 2016 till delivery of the possession of the suit premises to the petitioner.

6. Mr. Kanade has invited my attention to the impugned order and submitted that the Commissioner while remitting the matter to the Competent Authority observed that the documents placed on record, namely, photographs of the suit premises, email sent by the respondent No.1 clearly shows condition of the flat. The petitioner herein failed to carry out repairs of the suit premises as also failed to provide furnished flat as decided as per leave and licence agreement. Respondent No.1 is entitled to occupy the suit premises till the refund of the security deposit. He submitted that the Commissioner committed serious error in passing the impugned order.

7. On the other hand, Mr. Sarda supported the impugned order. He has invited my attention to the affidavit in reply filed by Ms Poonam Mishra, Director of the respondent No.1 as also email dated 14.09.2015 sent to the petitioner. He submitted that it was agreed between the parties that petitioner will provide fully furnished apartment with all the 3 air conditioners, fridge and other installed appliances working. The air conditioner units in the master bedroom and living room were inoperative since October 2014 (at the time of taking over possession). After this was brought to the notice of the petitioner, the cooling gas was refilled. However, in December, 2014, unit in the living room stopped functioning again. Same technicians refilled the cooling gas again. In May, 2015, again master bedroom and living room units became inoperative. Time and again, this was brought to the notice of the petitioner. In June, 2015, second bedroom unit stopped working and it was repeatedly brought to the notice of the petitioner with no result. The electric connection was also discontinued for 15 days for non-payment of additional security deposit. Though the petitioner was called upon to pay the additional security deposit, no payment was made. Respondent No.1 had paid that amount. The drains remained choked since October

2014. Kitchen sink and master bathroom lines are badly choked so the water, instead of draining out, overflowed into kitchen and master bedroom and this was also not attended by the petitioner. Master bedroom cannot be locked from inside. There is also dampness / leakage in both the bedrooms. The issues were brought to the notice of the petitioner by telephonic conversations as also at various personal meetings.

8. Mr. Sarda further submitted that on behalf of the respondent No.1, F.I.R. is lodged on 07.11.2015 against unknown person for illegally entering in the suit premises. He further submitted that respondent No.1 has expressed willingness to surrender the possession of the suit premises subject to refund of the security deposit. He invited my attention to clause (10) of the leave and licence agreement to support his contention that so long as the security deposit is not refunded, respondent No.1 is entitled to occupy the suit premises. He further states that even today, respondent No.1 is ready and willing to surrender possession of the suit premises provided security deposit is refunded by the petitioner.

9. 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 and is rather a matter of record that the petitioner and respondent No.1 entered into registered leave and licence agreement on 16.10.2014. The licensed period was for a period of 33 months commencing from 16.10.2014 and expiring on 14.08.2016. As per clause (3), the licensee was to pay monthly compensation of Rs.45,000/- for the first period of 11 months, Rs.49,500/- for the second period of 11 months and finally, Rs.54,450/- for the remaining period of 11 months. It appears that on 14.09.2015, respondent No.1 had sent email to the petitioner pointing out various deficiencies in the suit

premises. For the time being, I will proceed on the premise that the complaints made in the email of 14.09.2015 are true and correct. If at all, it was the grievance of the first respondent that the petitioner had not provided amenities as agreed in the leave and licence agreement, nothing prevented respondent No.1 from surrendering the suit premises. In fact, a perusal of the notice dated 07.12.2015 shows that respondent No.1 did not pay the compensation from August 2015 to December 2015 and thus, was in arrears of Rs.2,74,000/-. As against this, the security deposit paid by the first respondent was Rs.2,00,000/-. Mr. Sarda relied upon clause (10) of the leave and licence agreement to contend that so long as the security deposit is not refunded, respondent No.1 is entitled to occupy the suit premises. Clause (10) reads thus,

“(10) The Licensee shall deposit with the Licensor on or before execution of this agreement, a sum of Rs.2,00,000/- (Rupees Two Lakhs only) being the security deposit FREE OF INTEREST, out of which a sum of Rs.1,75,000/- will be returned to the Licensee on expiry of this Agreement or on notice of one month in advance for vacation of premises after the lock in period of eleven (11) months and against vacant and peaceful possession of the said premises, after deducting the arrears of monthly compensation, cost of damages, etc., if any, and the balance sum of Rs.25,000/- will be retained by the Licensor for the payment of the electricity / telephone bills upto the date of occupation of the said premises by the Licensee and after deducting the amount of such electricity bills / telephone bills / cable TV charges / parking charges / Mahanagar Gas bills, if any, to the fixtures / fittings and balance, if any, will be returned to the Licensee by the Licensor only after payment of these bills.”

10. A perusal of clause (10) does not remotely support the contention raised by Mr. Sarda. On one hand, respondent No.1 complained about not furnishing the suit premises as per the leave and licence agreement and on the other, did not handover possession of the suit premises.

11. Explanation (b) to Section 24 reads thus,

“24. Landlord entitled to recover possession of premises

given on licence on expiry.-

(1) to (3) ...

Explanation.- For the purposes of this section,-

(a) ...

(b) an agreement of licence in writing shall be conclusive evidence of the fact stated therein.”

12. A perusal of the above provision shows that the agreement of licence in writing is conclusive evidence of the fact stated therein. Section 24 of the Act is *pari materia* with Section 13-A(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. The conditions to attract Section 24 of the Act are as under:

(i) the licensor should be the owner of the flat.

(ii) the premises must have been given on licence.

(iii) period of licence should have expired.

(iv) the licensed agreement may be in writing or oral.

13. As mentioned earlier, the Competent Authority declined to grant leave to defend. Section 43(4)(a) reads thus,

“43. Special procedure for disposal of applications.-

(4)(a) The tenant or licensee on whom the summons is duly served in the ordinary way or by registered post in the manner laid down in sub-section (3) shall not contest the prayer for eviction from the premises, unless within thirty days of the service of summons on him as aforesaid, he files an affidavit stating grounds on which he seeks to contest the application for eviction and obtains leave from the Competent Authority as hereinafter provided, and in default of his appearance in pursuance of the summons or his obtaining such leave, the Statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant or the licensee, as the case may be, and the applicant shall be entitled to an order for eviction on the ground aforesaid;”

13. In view thereof, the Competent Authority allowed the application under Section 24 of the Act. The Commissioner, on the other hand,

without focusing on these aspects and also without considering the scope of regional powers under Section 44 of the Act went into the disputed questions as regards deficiencies in the suit premises. As held by this Court in ***Dinkar Keshav Deshmukh Vs. Vasantdada Sugar Institute, Pune, (1997) 1 Mh.L.J. 188***, the only enquiry, Commissioner could have conducted, was as to whether - (i) the licensor is the owner of the flat, (ii) the premises were given on licence, (iii) period of licence is expired, and (iv) licensed agreement is in writing or oral. If at all, respondent No.1 had any grievance against the petitioner for not complying the leave and licence agreement as regards providing furniture, etc., liberty could have been reserved to the first respondent to adopt appropriate proceedings for recovery of the damages, compensation etc. after surrendering the possession of the suit premises. Be that as it may. The Commissioner overstepped the jurisdiction conferred on him under Section 44 of the Act. In view thereof, the order passed by the Commissioner deserves to be set aside thereby restoring the order of the Competent Authority. Hence, Petition succeeds. Impugned order dated 07.02.2018 passed by the Commissioner in Revision No.954 of 2017 is set aside. The order of the Competent Authority dated 10.08.2017 in Case No.4 of 2016 is restored. Rule is made absolute accordingly with no order as to costs.

(R. G. KETKAR, J.)

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