IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7308 OF 2015

Navnath Gangaram Shinde	…	Petitioner
Vs.		
Jagannath Satyawan Ambre and others	…	Respondents

WITH

CIVIL APPLICATION NO.688 OF 2019 IN W.P.NO.7308 OF 2015

Jagannath Satyawan Ambre and another	…	Applicants
Vs.		
Navnath Gangaram Shinde	…	Respondent

Mr. Vijay Patil a/w. Mr. S. Kocharekar i/b. Mr. Tushar L. Pimple for Petitioner.
Mr. S. G. Kudle a/w. Mr. Santosh Kumar Singh for Respondents No.1 and 2.
Mr. P. P. Pujari, AGP for Respondents No.3 to 5-State.

CORAM :	**R. G. KETKAR, J.**
RESERVED ON :	31st JULY, 2019
PRONOUNCED ON:	14th AUGUST, 2019

JUDGMENT :

Heard Mr. Patil, learned Counsel for the petitioner, Mr. Kudle and Mr.Singh, learned Counsel for the respondents No.1 and 2 and Mr. Metkari, learned AGP for the respondents No.3 to 5 at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner has challenged - (i) order dated 10.11.2014 (first order), (ii) order dated 10.11.2014 (second order), both, passed by the Competent Authority, Konkan Division, Mumbai (for short 'Competent Authority') in Application No.79 of 2013, and (iii) order dated 16.07.2015 passed by the Additional Commissioner, Konkan Division, Mumbai (for short 'Commissioner') in Revision No.474 of 2014.

3. By the first order dated 10.11.2014, the Competent Authority rejected the application made by the petitioner seeking leave to defend proceedings

filed by the respondents No.1 and 2 under Section 24 of the Maharashtra Rent Control Act, 1999 (for short ‘Act’). By the second order dated 10.11.2014, the Competent Authority allowed the application made by the respondents No.1 and 2 under Section 24 of the Act and directed the petitioner to handover the vacant and peaceful possession of flats No.305-A and 305-B, Building No.14, Parth Co-operative Housing Society Limited, Krishnasthal, Mira Road (East), District Thane (for short ‘suit premises’) to the respondents No.1 and 2. The petitioner is further directed to pay to the respondents No.1 and 2, Rs.10,000/- per month from July 2013 till vacant possession of the suit premises is delivered to the respondents No.1 and 2. By order dated 16.07.2015, the Commissioner dismissed the Revision Application filed by the petitioner under Section 44 of the Act.

4. The Petition was heard on 27.07.2015. This Court issued notice to the respondents, returnable on 25.08.2015, and until the returnable date, ad-interim relief in terms of prayer clause (b) was granted, subject to the condition of petitioner depositing in this Court on or before 21.08.2015, an amount of Rs.2,50,000/-. The office remark shows that petitioner has deposited Rs.2,50,000/- in this Court.

5. The Petition was thereafter heard on 25.08.2015. After hearing the learned Counsel for the petitioner and respondents No.1 and 2, Rule was issued and was made returnable on 04.01.2016. In addition to amount of Rs.2,50,000/- deposited by the petitioner, the petitioner was directed to deposit compensation of Rs.10,000/- per month with effect from 01.12.2014. The arrears were to be deposited within a period of 6 weeks and amount of Rs.2,50,000/- and the arrears were ordered to be invested in a Nationalised

Bank in Fixed Deposit for an initial period of six months. The petitioner was also directed to file usual undertaking.

6. Civil Application No.688 of 2019 was taken out on behalf of the respondents No.1 and 2 *inter alia* praying for disbursing the amount deposited by the petitioner to the respondents No.1 and 2 and for further directing the petitioner to pay the regular rent of the suit premises to the respondents No.1 and 2 as also for fixing peremptory date of hearing. Civil Application was disposed of on 09.04.2019. Prayer clause (A) was not pressed. Before considering the prayer for fixing date of hearing, R & P was called for and it was clarified that on the next date of hearing, the prayer for fixing peremptory date of hearing would be considered. After receipt of R & P, Writ Petition was accordingly fixed for final hearing on 26.07.2019. On 26.07.2019, it was adjourned to 30.07.2019 at 3.00 p.m. On 30.07.2019, the matter was partly heard and was adjourned to 31.07.2019. On 31.07.2019, respondents No.1 and 2 tendered written submissions. The Court made certain queries to Mr.Singh and he was heard on those queries. The facts and circumstances giving rise to filing of the present Petition, briefly stated, are as under:

7. It is the case of the petitioner that he had purchased the suit premises, in all, admeasuring 1050 sq.ft. from one Mrs. Sudha S. Dalvi on 14.10.2005 by registered agreement of sale by paying entire consideration. Prior to that, on 15.09.2005, the Society had issued No Objection Certificate to the original owner Dalvi to sell and / or transfer the suit premises and shares standing in her name as per the Rules and Regulations of the Maharashtra Co-operative Societies Act, 1960 and the Bye-laws of the Society. The petitioner has come with the case that he is totally illiterate person and never attended school in

his life and somehow can sign in Marathi language. He is not able to read and write any language and also not conversant with the legal documents.

8. The petitioner alleged that respondent No.1 is carrying on money lending business. The relationship between the petitioner and respondent No.1 was very cordial and he was having blind faith in respondent No.1. The petitioner was in need of money for the purpose of his small business of plying tempo on hire basis. As the respondent No.1 is doing money lending business, petitioner requested him to lend some amount to him. Respondent No.1 informed the petitioner to mortgage the suit premises. The petitioner was ready to mortgage the suit premises with respondent No.1 for availing loan. As respondent No.1 was his best friend, petitioner had full faith in him. The petitioner never enquired as to what documents he got executed in respect of the suit premises with respondent No.1, who also obtained signatures of the petitioner on various documents and blank papers. The petitioner was under impression that the suit premises are mortgaged with respondent No.1. Instead of executing Mortgage Deed, respondents No.1 and 2 executed Agreement for Sale in respect of the suit premises as also got it executed. The petitioner alleged that along with the said Agreement, respondents No.1 and 2 also obtained signature of the petitioner on the stamped receipts of Rs.2.50 lakhs each as also on the various documents and bank papers. Taking undue advantage of illiteracy of the petitioner, respondents No.1 and 2 practised fraud upon him and deceived and cheated the petitioner with intention of grabbing the suit premises.

9. Respondents No.1 and 2 filed Application No.79 of 2013 under Section 24 of the Act before the Competent Authority against the petitioner for

recovery of possession of the suit premises. It is at that time, petitioner realized that petitioners No.1 and 2 had played fraud upon him. The petitioner was served with the notice on 13.12.2013 asking him to appear before the Competent Authority on 21.01.2014 at 11.00 a.m. and obtain leave to contest the application for eviction. The petitioner appeared along with his Advocate and filed application on 23.01.2014 for leave to defend. Respondents No.1 and 2 filed reply on 11.02.2014 opposing the application for leave to defend. The petitioner also filed written arguments in support of his submissions. By the first order dated 10.11.2014, the Competent Authority rejected leave to defend application. On the same day, by the second order dated 10.11.2014, the Competent Authority allowed the application under Section 24 of the Act. Aggrieved by these orders, the petitioner preferred Revision under Section 44 of the Act before the Commissioner, which was dismissed on 16.07.2015. It is against these orders, the petitioner has instituted the present Petition.

10. In support of this Petition, Mr. Patil reiterated the contentions that were raised in the application for leave to defend filed before the Competent Authority, in the Revision Application filed before the Commissioner as also contentions raised in the written arguments filed before the Commissioner and in this Petition. Mr. Patil invited my attention to the purported registered Agreement for Sale dated 13.08.2012 allegedly executed by the petitioner in favour of the respondents No.1 and 2. Clause 1 recited that the total consideration of the suit premises is Rs.25 lakhs. Clause (a) recited that respondents No.1 and 2, being the purchasers, shall pay to the petitioner, being the vendor, Rs.2,50,000/- on or before the execution of the agreement as and by way of part payment of the agreed consideration. Blanks in clauses (b) to (f) specifying the dates on or before which the part payment was agreed

to be paid by respondents No.1 and 2 are not filled in. Two receipts of Rs.2,50,000/- each signed by the petitioner were annexed to this Agreement. Thus, as against clause 1(a) of the agreement regarding consideration of Rs.2,50,000/-, receipts showed payment of Rs.5,00,000/- in all by respondents No.1 and 2, in cash, to the petitioner. He has invited my attention to-

i) paragraphs 3 to 6 of the Application for leave to defend;

ii) paragraphs 6, 7, 8, 16 and 19 to 22 of the Revision Application filed before the Commissioner;

iii) paragraph 3 of written arguments filed before the Commissioner and;

iv) paragraph 12 of the Writ Petition.

11. Relying upon the aforesaid material, Mr. Patil submitted that the Competent Authority ought to have granted leave to defend as contemplated by Section 43(4)(b) of the Act. The Competent Authority should have thereafter followed the procedure under section 43(4)(c) and ought to have held inquiry under Section 43(5) of the Act.

12. Mr. Patil submitted that at the time of hearing of the application before the Competent Authority, respondents No.1 to 3, for the first time, produced three bearer cheques, namely, cheques bearing No.012940 and 12941, both dated 13.08.2012 for a sum of Rs.5,00,000/- each and cheque No.012950 dated 14.10.2012 for a sum of Rs.6,50,000/- drawn on Vasai Janata Sahakari Bank Limited, Dahisar (East) Branch, Mumbai shown to be issued in the name of the petitioner towards alleged payments as per the Agreement for Sale in respect of the suit premises drawn by Shree Swami Samarth Construction. He submitted that an amount of Rs.10,00,000/- was withdrawn by Mr. Mangesh

Raje and amount of Rs.6,50,000/- was withdrawn by Mr. Kisan Ramchandra Shinde (both are relatives of respondents No.1 and 2 and attesting witnesses to the Agreement for Sale). The said amounts were withdrawn in the month of October 2012 i.e. after two months from the date of the alleged Agreement for Sale. He submitted that signatures on the reverse side of the said cheques are not signatures of the petitioner and are forged and fabricated by respondents No.1 and 2. There are also signatures of Mr. Raje and Mr. Shinde on the reverse side of the said cheques so also there is photocopy of PAN Card of Kisan Ramchandra Shinde on the reverse side of cheque bearing No.012950 for a sum of Rs.6,50,000/-. In short, he submitted that the amounts of Rs.16,50,000/- were withdrawn by S/sh. Raje and Shinde from the said Bank on the instructions and directions of respondents No.1 and 2. The petitioner has not received single penny towards the alleged Agreement for Sale.

13. Mr. Patil further submitted that the purported Agreement for Sale was executed on 13.08.2012 and on the same day, shares were transferred by the Society in the name of respondents No.1 and 2 without convening AGM or the meeting of the Managing Committee. The petitioner has also obtained opinion of handwriting expert. He submitted that in fact, the alleged amount of Rs.16,50,000/- ought to have been credited in the account of the petitioner as the petitioner is maintaining Account with the very same Branch of Vasai Janata Sahakari Bank Limited. The petitioner has filed Suit for cancellation of Agreement for Sale, declaration and injunction. He, therefore, submitted that the impugned orders deserve to be set aside thereby allowing the Petition.

14. On the other hand, Mr. Kudle supported the impugned orders. He relied upon explanation (b) to Section 24 of the Act to contend that agreement of

licence in writing is conclusive evidence of fact stated therein. In support of his submissions, he relied upon the following decisions:

a. ***Amit B. Dalal Vs. Rajesh K. Doctor***, **2010 (7) Mh.L.J. 1**; and

b. ***Surendra B. Agarwal Vs. AML Merchandising Private Ltd.***, **2010 (1) Mh.L.J. 223**;

15. Mr. Kudale has taken me through the-

(i) Receipt showing payment of Rs.20,000/- made by respondents No.1 and 2 to the Society for transfer of shares in their name;

(ii) Share Certificate No.30 dated 11.09.2002 recording transfer of shares on 13.08.2012;

(iii) payment of diverse amounts by respondents No.1 and 2 towards building repairs, colour painting, etc.;

(iv) Complaint made by the first respondent to the Senior Inspector of Police, Kashimira Police Station, Mira Road (East);

(v) Affidavit-cum-undertaking given by the petitioner declaring that he has received entire consideration;

(vi) Bank statement of Vasai Janata Sahakari Bank Limited, Dahisar (East) Branch; and

(vii) payment confirmation letter of the bank.

16. Mr. Singh has taken me through the written submissions dated 31.07.2019 tendered after the conclusion of the hearing of the Petition. He submitted that after purchasing the suit premises, respondents No.1 and 2 have paid Rs.23,568/- towards society maintenance charges. Respondents No.1 and 2 had paid Rs.20,000/- for getting Share Certificate transferred in their name. At the time of execution of the Agreement for Sale, petitioner received

Rs.5,00,000/- and balance Rs.20,00,000/- was received by the petitioner by cheques dated 13.08.2012 (3 cheques) bearing No.012940, 012941 and 012944 and cheque No.012950 dated 19.10.2012. The amounts paid by cheques are duly received by the petitioner and the same can be reflected in the bank Account of respondent No.1. The petitioner had filed Affidavit-cum-Undertaking on 20.02.2013 confirming that respondents No.1 and 2 are the absolute owners of the suit premises and that he has received full and final payment of the sale consideration from respondents No.1 and 2. He also relied upon letter dated 10.04.2014 issued by Vasai Janata Sahakari Bank Limited addressed to Advocate M. L. Deshpande of the petitioner confirming that the payment was made by the bearer cheques issued by the respondent No.1. The amount in question was paid to the cheque holder in whose name it was drawn. He submitted that petitioner is paying the electricity charges in the name of respondents No.1 and 2. He submitted that as far as the date of transfer of Share Certificate on 13.08.2012 is concerned, the Certificate was transferred in favour of respondents No.1 and 2 on account of having received an amount of transfer fee from them on 13.08.2012, and accordingly, that date is specified on the transfer of Share Certificate. The Share Certificate was factually received by respondents No.1 and 2 after 4-5 months from the date of Agreement for Sale. Though the petitioner had filed criminal case in the Court of Judicial Magistrate First Class, Thane, petitioner did not pursue the criminal case to its logical conclusion. He, therefore, submitted that no case is made out for interfering with the impugned orders.

17. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. Respondents No.1 and 2 have filed proceedings under Section 24 of the Act on

the ground that by registered Agreement for Sale dated 13.08.2012, petitioner agreed to sell the suit premises to them for a total consideration of Rs.25,00,000/-. A perusal of the Agreement for Sale *prima facie* shows that clause 1(a) of the Agreement recited that Rs.2,50,000/- were paid by respondents No.1 and 2 to the petitioner on / or before execution of the agreement as and by way of part payment of the agreed consideration. Clauses (b) to (f) recorded that amounts were to be paid on or before a specified date towards part payment of the agreed consideration. However, the blanks in clauses (b) to (f) are not filled in. The agreement is witnessed by Mr. Raje and Mr. Shinde.

18. It appears that on 16.08.2012, agreement of leave and licence was executed by respondents No.1 and 2 in favour of the petitioner. The petitioner filed application for leave to defend on or about 23.01.2014 i.e. within the stipulated time. The petitioner specifically asserted that he did not receive Rs.16,50,000/- as alleged. The Share Certificate was transferred on the day of execution of the Agreement for Sale i.e. 13.08.2012. It is practically impossible to complete the formalities for transfer of the Share Certificate. The petitioner further contended that he is having Current Account No.111/10 with Vasai Janata Sahakari Bank, Dahisar Branch. However, there is no transfer entry for Rs.16,50,000/-. It is significant to note that two cheques of Rs.5 lakhs each and one cheque of Rs.6,50,000/- are drawn on Vasai Janata Sahakari Bank, Dahisar (East) Branch. The cheques are bearer cheques and the amounts are withdrawn by cash. It is surprising that when the petitioner has Account in the very same Branch, why the amounts were not credited in his Account. A perusal of the reverse side of these cheques *prima facie* indicates that it bears signature of Mr. Raje on two cheques of Rs.5 lakhs each and signature of

Mr.Shinde on the cheque of Rs.6,50,000/-. The photocopy of the PAN Card of Kisan Ramchandra Shinde is also on the reverse side of the said cheque.

19. It appears that the cheques were produced for the first time before the Competent Authority, and therefore, petitioner had no opportunity to deal with those bearer cheques. The petitioner has obtained opinion of the handwriting expert dated 29.06.2015. This was relied by the petitioner in the written arguments dated 09.07.2015 filed before the Commissioner. The petitioner also referred to filing of the Suit for cancellation of the Agreement for Sale, declaration and injunction. A perusal of the order passed by the Commissioner does not indicate that the Commissioner has dealt with this aspect. That apart, *prima facie*, the Agreement for Sale is surrounded by suspicious circumstances. In my opinion, the Competent Authority ought to have granted leave to defend to the petitioner as contemplated by Section 43(4)(b) and followed the procedure laid down under Sections 43(4)(c) and 43(5) of the Act. The petitioner has made out more than a *prima facie* case and has raised triable issues. The Competent Authority committed error in rejecting the Application for leave to defend and allowing the Application under Section 24 of the Act. The Commissioner also did not deal with these aspects while rejecting the Revision Application. As I am remitting the case before the Competent Authority, I have not dealt with various contentions raised by the learned Counsel appearing for the parties and recorded in this order, lest, it will influence the Competent Authority. All contentions of the parties on merits are expressly kept open. In view thereof, Petition succeeds and is disposed of in the following terms:

a. First order and the second order, both, dated 10.11.2014 passed by the Competent Authority as also order dated 16.07.2015 passed by the Commissioner are set aside;

b. Application for leave to defend made by the petitioner stands allowed;

c. The Competent Authority will now proceed with the matter in accordance with the provisions of Sections 43(4)(c) and 43(5) of the Act;

d. All contentions of the parties on merits are expressly kept open;

e. The petitioner is permitted to withdraw the amount deposited in this Court, unconditionally;

f. Rule is made absolute accordingly with no order as to costs.

20. In view of the disposal of the Petition, nothing survives in Civil Application No.688 of 2019 taken out by the respondent for fixing the preliminary date of early hearing as also for disbursing the deposited amount to the respondent and the same is disposed of accordingly.

(R. G. KETKAR, J.)

Minal Parab