

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 7977 OF 2019

Mrs.Kalpana Shukla	...	Petitioner
V/s.		
Dinesh Yaduvansh Singh	...	Respondent

Mr.Manoj Patil for Petitioner.
Mr.Vinod Pandey i/b. Mr.S.U. Pandey for Respondent.

CORAM : A.S. GADKARI, J.

DATE : 13th November 2019.

PC. :

1] By the present Petition under Article 227 of the Constitution of India, the petitioner/licensee has impugned concurrent findings recorded by both the Authorities below, constituted under the Maharashtra Rent Control Act, 1999 (for short, “the said Act”). The application preferred under Section 24 of the said Act by the respondent has been allowed by the Competent Authority by its Judgment and Order dated 6th December 2018, thereby directing the petitioner to handover vacant and peaceful possession of the suit premises i.e. Flat No.D/C- 08, 3rd Floor, Plot-D, Nirman Co-Operative Housing Society Limited, Rani Sati Nagar Building, S.V. Road, Malad (West), Mumbai – 400 064 within 30 days from the date of passing of the said Order. The said Order has been confirmed by the Revisional Authority under Section 44 of the said Act by its Order dated 7th June 2019.

2] Heard Mr.Patil, learned counsel for the petitioner and Mr.Pandey, learned counsel for the respondent. Perused the entire record annexed to the Petition.

3] The record indicates that, the respondent was in actual use, occupation and possession of the suit flat. That the respondent entered into and executed a 'Leave and Licence Agreement' with the petitioner on 28th December 2015, thereby granting licence to petitioner to use and occupy the suit flat for a period commencing from 5th December 2015 upto 3rd December 2017 by accepting requisite compensation in that behalf. The said 'Leave and Licence Agreement' is duly registered with the Sub-Registrar of Assurances, Mumbai (Bandra). As the petitioner did not vacate the suit premises, even after lapse of the licence period mentioned in the agreement, the respondent was constrained to file an application bearing Application No.49 of 2018 before the Competent Authority (Rent Act), Konkan Division at Bandra, Mumbai under Section 24 of the said Act. The petitioner had filed an application for 'Leave to Defend' on 26th June 2018. The said application was turned down by the Competent Authority by its Order dated 6th December 2018. The Competent Authority after perusing the record was pleased to pass the impugned Judgment and Order dated 6th December 2018 directing the petitioner to vacate the suit premises within a period of 30 days. The Revision Application preferred by the petitioner under Section 44 of the said Act has been rejected by the Revisional Authority as noted earlier.

4] Mr.Patil, learned counsel for the petitioner submitted that, the respondent herein cannot be termed as a landlord as he has failed to produce any document on record to establish his title in his capacity as landlord over the suit property. He submitted that, the Competent Authority at the first instance has committed an error in not allowing the application filed by the petitioner for 'leave to defend'. He submitted that, the language of Section 24 of the said Act mentions the term as 'landlord' and in the absence of production of any document in support of claim of the respondent showing his title over the property, the Competent Authority ought not to have entertained his application. He therefore prayed that the impugned Orders may be set-aside by allowing the present Petition.

5] Per contra, learned counsel appearing for the respondent vehemently opposed the Petition and submitted that the respondent was having every authority under the law to execute the said 'Leave and Licence Agreement' dated 28th December 2015 and therefore, the said Agreement came to be executed between the parties. He submitted that, despite completion of licence period the petitioner did not vacate the suit premises and is using it without any lawful authority. Learned counsel for the respondent supported the impugned Orders and prayed that the present Petition may be dismissed summarily.

6] At the outset, it is to be noted here that, the submission of the learned counsel for the petitioner as recorded hereinabove is recorded only for its rejection at its threshold as it is *dehors* of any merits. A plain reading of Section 24 of the said Act would indicate that, though the heading of the said Section uses the term

'landlord', the said Section deals with and prescribes recovery of possession of premises given on 'licence' on its expiry. Thus what is contemplated under Section 24 of the said Act is recovery of the possession from a 'licensee' by the 'licensor'. It is the trite position of law that, a licensee after entering into an agreement for 'Leave and Licence' with the licensor cannot as an afterthought, question the title of the licensor. It appears from the record that, this wisdom of the petitioner that, the licensor herein has no title over the suit property did not prevail on her at the time of entering into and executing the 'Leave and Licence Agreement'. It is by way of a sheer afterthought and with a view to engulf the suit property, such a spacious plea has been raised. The said plea therefore cannot be accepted and needs to be rejected out-rightly.

7] In view thereof, the contention of the petitioner that the respondent has no right, title or interest in the property as a landlord cannot be accepted. It is to be noted here that, the said agreement for 'Leave and Licence' dated 28th December 2015 is a document/indenture duly registered before the Competent Authority i.e. the Sub-Registrar of Assurances, Mumbai (Bandra). The petitioner has willingly executed the said document thereby accepting licence to reside in the said premises. The record clearly indicates that, the petitioner failed to vacate and handover the suit premises after expiry of the period mentioned in the said 'Leave and Licence Agreement' and is still in possession of the suit premises. It appears that, with a view to further retain the illegal possession of the suit premises, the petitioner is raising all such specious pleas as an afterthought. Even otherwise the

appellant being licensee cannot have a claim/right as of a owner over the suit premises.

8] After perusing the entire record, this Court is of the considered view that, both the Authorities below have not committed any error either in law or on facts while passing the impugned Orders.

The Petition being devoid of any merits is accordingly dismissed in *limine*.

9] The petitioner is directed to handover vacant and peaceful possession of the suit premises to the respondent within a period of 15 days from today. If the petitioner fails to handover vacant and peaceful possession of the suit premises to the respondent within the stipulated period, the respondent will be at liberty to execute the Order passed by the Competent Authority dated 6th December 2018 by availing police assistance in that behalf. The Senior Inspector of Police, Malad (West) Police Station within whose jurisdiction the suit premises situate, is directed to provide necessary and requisite police assistance to the respondent, after appropriate Orders are passed in that behalf by the Competent Authority in execution proceedings.

10] The petitioner is directed to file undertaking before this Court within a period of two days from today stating that, she herself is in possession of the suit premises and she will not create any third party right, title or interest in the suit premises till the time either she herself handover vacant and peaceful possession or she is forcefully evicted from the suit premises.

11] The respondent is permitted to withdraw the amount of compensation deposited by the petitioner in the Registry in pursuance of Orders dated 3rd July 2019 and 18th July 2019 passed by this Court by filing appropriate application before the concerned Authority. The Registrar/Nazar of this Court is hereby directed to permit the respondent to withdrew the said amount by filing usual undertaking in that behalf, if necessary, after producing the authenticated copy of this Order.

12] This Order is passed and dictated in open Court in presence of petitioner and her Advocate and therefore, it is expected from the petitioner to comply the directions issued hereinabove without waiting for an authenticated copy of this Order.

13] All the concerned to act on the basis of the authenticated copy of this Order.

[A.S. GADKARI, J.]