

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7712 OF 2019

Kamanna Yashwant Pandhare ... Petitioner
Vs.
Smita Ashok Bhavtankar and another ... Respondents

Mr. Sandesh Patil a/w. Ms Anusha Amin i/b. Mr. Kiran B. Bhagat for
Petitioner.
Mr. Gaurav Parkar for Respondents.

CORAM : R. G. KETKAR, J.
DATE : JULY 19, 2019

P.C. :

Heard Mr. Patil, learned Counsel for the petitioner and Mr. Parkar,
learned Counsel for the respondents at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner has challenged the order dated 14.03.2018 (first order); order dated 14.03.2018 (second order), both, passed by the Competent Authority (Rent Act), Konkan Division, Mumbai (for short 'Competent Authority') in Application No.68 of 2016 as also the order dated 22.05.2019 passed by the Additional Commissioner, Konkan Division, Mumbai (for short 'Commissioner') in Revision No.321 of 2018. By the first order, the Competent Authority rejected the application made by the petitioner herein for leave to defend. By the second order, 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 petitioner herein to handover vacant and peaceful possession of flat No.B/106, Isha Shopping Complex, Plot 3C, Sector 15, Nerul, Navi Mumbai (for short 'suit premises'). The petitioner is further directed to pay to the respondents, arrears of licence fees till 30.06.2015 and double the rate of monthly licence fees i.e. Rs.20,000 x 2,000 =

Rs.40,000/- from 01.07.2015 till vacant possession of the suit premises is delivered to the respondents.

3. Mr. Patil seeks leave to annex that order. Leave to annex as prayed for is granted. Amendment shall be carried out within one week from today.

4. By order dated 22.05.2019, the Commissioner dismissed the Revision Application preferred by the petitioner.

5. In support of this Petition, Mr. Patil strenuously contended that petitioner has instituted Special Civil Suit No.239 of 2018 in the Court of Civil Judge, Senior Division, Thane for specific performance of oral agreement dated 20.07.2014. He submitted that the respondents agreed to sell the suit premises to the petitioner for a valuable consideration of Rs.1 crore. Out of Rs.1 crore, petitioner had paid Rs.11,00,000/- by way of cheque and cash. The Suit is pending. He submitted that as the respondents had agreed to sell the suit premises for consideration of Rs.1 crore, the Authorities below were not justified in passing the impugned orders.

6. On the other hand, Mr. Parkar supported the impugned orders. He submitted that petitioner had earlier instituted Regular Suit No.97 of 2016 in the Court of Civil Judge Junior Division, Vashi. During the pendency of that Suit, petitioner took out application for injunction. By order dated 06.05.2016, the application was rejected by the trial Court. The petitioner challenged that order by filing Miscellaneous Appeal No.119 of 2016 before the District Judge, which was dismissed on 14.09.2016. He submitted that while dismissing the appeal, the learned District Judge observed that the payment made by the petitioner was towards licence fees and not towards part consideration for sale of the

suit premises. He submitted that the Authorities below considered that the parties entered into registered leave and licence agreements dated 11.12.2009 and 04.07.2014. The suit premises was given for residential purpose. In view of explanation (b) to Section 24, the Authorities below were justified in passing the impugned orders.

7. 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 that three leave and licence agreements were entered into by and between the parties on 11.12.2009, 01.04.2012 and 04.07.2014. The leave and licence agreements dated 11.12.2009 and 04.07.2014 are registered agreements. The last registered agreement dated 04.07.2014 was executed for a period of one year commencing from 01.07.2014 and ending on 30.06.2015. As the petitioner did not handover possession after expiry of the licenced period, respondents instituted proceedings under Section 24 of the Act. After considering the material on record, the Competent Authority rejected the application for leave to defend by first order dated 14.03.2018. The Competent Authority referred to the decision in ***Precision Steel & Engineering Works Vs. Prem Niranjana Deva Tayal***, AIR 1982 SC 1518. The Competent Authority thereafter allowed the application made by the respondents under Section 24 of the Act. The operative part of the order reads thus,

- (i) The Application is allowed.
- (ii) The respondent is hereby directed to handover the vacant and peaceful possession to the applicant of the application premises i.e. being Flat No.B/106, Isha Shopping Complex, Plot 3C, Sector 15, Nerul, Navi Mumbai.
- (iii) The respondent is hereby directed to pay to the applicant, arrears of license fees till 30/06/2015 and double the rate of monthly licence fees i.e. Rs.20,000/- x 2 = Rs.40,000/- from 01/07/2015 till vacant possession of the said application premises is delivered to the applicant.”

8. The Revision Application preferred by the petitioner was dismissed. As noted earlier, Suit instituted by the petitioner for specific performance of contract is pending. Thus, as on date, petitioner has not become owner of the suit premises. The relationship between the parties is that of a licensor and a licensee. In view of explanation (b) to Section 24, the agreement of leave and licence in writing is a conclusive evidence of facts stated therein. During the course of hearing, I made enquiries with Mr. Patil as to whether petitioner is ready and willing to comply clause (iii) of the operative part of the order dated 14.03.2018 of the Competent Authority. At his request, matter was kept after lunch recess. Upon taking instructions, he submitted that petitioner is not ready and willing to comply clause (iii) of the operative part of the order dated 14.03.2018. In view of Section 24(2) of the Act as also for the reasons recorded herein, no case is made out for interfering with the impugned orders. Hence, Petition fails and the same is dismissed. It is made clear that the observations made herein are only for the purpose of considering the correctness of the impugned orders. The learned Civil Judge, Senior Division, Thane seized of the Special Civil Suit No.239 of 2018 will proceed with the Suit uninfluenced by the observations made herein as also decide the Suit on the basis of evidence on record and in accordance with law.

9. All parties to act upon the authenticated copy of this order.

(R. G. KETKAR, J.)

Minal Parab