

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.1816 OF 2019

Anil Baburao Saroj	]	Petitioner
Vs.		
Sambhaji Baburao Shinde	]	Respondent

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Mr. Girish J. Paryani, learned Counsel for the Petitioner.
Ms. Tanaya Patankar i/b Mr. P.M. Jadhav, learned Counsel for the Respondent.

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CORAM : R.G. KETKAR, J.

DATE : 5TH MARCH, 2019.

P.C.

Heard Mr. Paryani, learned Counsel for the petitioner and Ms. Patankar, learned Counsel for the respondent at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged;

[1] order dated 21st June, 2018 passed by the Additional Commissioner, Konkan Division, Mumbai (for short 'Commissioner') in Revision No.1094 of 2017.

[2] order dated 13th February, 2019 passed by the Additional Commissioner, Konkan Division, Mumbai in Revision No.1094 of 2017.

3. By order dated 21st June, 2018, the Commissioner allowed the revision application filed by the respondent and set aside the order dated 29th

August, 2017 passed by the Competent Authority, Konkan Division, Mumbai (for short 'Competent Authority') in Case No.103 of 2016. As there was controversy between the parties as to whether the Commissioner had allowed the revision application filed by respondent under section 24 of the Maharashtra Rent Control Act, 1999 (for short 'Act') or whether the Commissioner had remitted the proceedings before the Competent Authority for fresh decision, respondent filed application for speaking to minutes before the Commissioner. By order dated 13th February, 2019, the Commissioner directed the petitioner herein to vacate and hand over peaceful possession of Flat No.1 situate on the ground floor of Shri Dayal Co-operative Housing Society, Dayal Dham, Khadakpada, Kalyan (West), Thane – 421 301 (for short 'suit premises') to the respondent within 30 days from the date of the order. The petitioner is further directed to pay Rs.4800/- per month from August, 2004 till vacant possession of the suit premises is delivered to the respondent. It is against these orders, the petitioner has instituted the present Petition.

4. In support of this Petition, Mr. Paryani strenuously contended that the Commissioner was not justified in allowing the revision application and directing the petitioner to hand over possession of the suit premises to the respondent. He submitted that in fact there is no oral or written leave and licence agreement between the parties. The petitioner was inducted in the suit premises some time in the year 2004. In the year 2008, the respondent agreed to sell the suit premises to the petitioner for a valuable consideration of Rs.18,00,000/-. Out of 18,00,000/-, the petitioner paid Rs.7,00,000/- in cash and agreed to pay balance consideration to the respondent. He submitted that the very fact that from 2004 till 2016 i.e for more than 12 years, the respondent did not claim any licence fee from the petitioner substantiates case of the petitioner that the respondent agreed to sell the suit premises to the petitioner.

5. Mr. Paryani invited my attention to clause 3 of the operative part of the order dated 13th February, 2019 by which the Commissioner directed the petitioner to pay Rs.4800/- per month from August, 2004 till delivery of vacant possession to the respondent. He has also invited my attention to paragraph 15 of the application filed by the first respondent under section 24 of the Act. He submitted that in the order dated 21st June, 2018 of the Commissioner, it was noted that the petitioner had paid several amounts to the first respondent. Apart from that, in any case, the Commissioner was not justified in ordering payment of Rs.4800/- per month from 2004 till handing over possession. At the highest, the Commissioner could have directed the petitioner to pay compensation @ Rs.4800/- per month three years preceding of filing of the application under section 24 of the Act. He, therefore, submitted that the Petition requires consideration.

6. On the other hand, Ms. Patankar supported the impugned orders. She submitted that in the order dated 21st June, 2018, the Commissioner considered the case made out by the petitioner that respondent No.1 agreed to sell the suit premises to the petitioner and after considering the entire material on record held that the petitioner has not established that he was occupying the suit premises as a prospective purchaser. She submitted that in terms of section 24 (2) of the Act, after the licence is revoked, the petitioner is liable to pay damages at double the rate of the licence fee or charge of the premises fixed under the agreement of licence. She, therefore, submitted that no case is made out for interfering with the impugned orders.

7. I have considered the rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. The Competent Authority rejected the application under section 24 of the Act on the ground that there is no written leave and licence agreement. The

Commissioner while passing the order on 21st June, 2018 noted that though the petitioner came with the case that respondent No.1 agreed to sell the suit premises for total consideration of Rs.18,00,000/- and that he had paid Rs.7,00,000/- in cash, the petitioner herein did not produce any evidence to substantiate that he had paid Rs.7,00,000/- towards purchase of the suit premises. In fact, there was not even written agreement of sale between the parties. The Commissioner also dealt with arrangement about payment of society maintenance charges, taxes etc arrived at between the parties and observed that petitioner failed to place on record any document which proves his contentions. The Commissioner, therefore, concluded that there is relationship of licensor and licensee between the parties.

8. For the reasons recorded in paragraphs 3 to 6 of the order dated 21st June, 2018, I do not find that the Commissioner committed any error in arriving at conclusion. It is also significant to note that though the petitioner claims that transaction of agreement of sale took place in the year 2008, till date, the suit for specific performance of contract is not instituted. Mr. Paryani submitted that the Commissioner was not justified in directing the petitioner to pay Rs.4800/- per month from August, 2004 till delivery of possession. It is not possible to accept this submission. The premises were given on licence by charging Rs.2400/- per month. Section 24 (2) of the Act lays down that any licensee who does not deliver possession of the premises to the landlord on expiry of the period of licence and continues to be in possession of the licensed premises till he is dispossessed by the Competent Authority shall be liable to pay damages at double the rate of the licence fee or charge of the premises fixed under the agreement of licence.

9. In view thereof, no case is made out for interfering with the impugned order, Petition fails and the same is dismissed. The petitioner is at

liberty to adopt appropriate proceeding if he claims to have paid excess amount to the respondent.

[R.G. KETKAR, J.]