

WRIT PETITION NO.9802 OF 2019

Mr. K.K. Pandey, for the Petitioner.

Mr. G.V. Murti and Mr. Mohun Rao, i/b. Mr. S.M. Chauhan, for Respondent No.1.

Mr. S.P. Srivastava, for Respondent No.2.

WRIT PETITION NO.8971 OF 2019

Mr. S.P. Srivastava, for the Petitioner.

Mr. G.V. Murti and Mr. Mohun Rao, i/b. Mr. S.M. Chauhan, for Respondent No.1.

Mr. K.K. Pandey, for Respondent No.2.

CORAM : S.C. GUPTE, J.

DATED: SEPTEMBER 4, 2019

P.C. :

. Writ Petition No.9802 of 2019 is filed by a person, who purportedly claims as an occupant of the suit premises. The premises consist of a room, being Room No.11, at Moti Thakur Dima Chawl,

Kherwadi, Bandra East, Mumbai. The impugned order is passed in an execution application filed by Respondent No.1 (original plaintiff), who is a landlord of the suit premises and who has obtained a decree of eviction against Respondent No.2 (original defendant), who is claimed to be his licensee in respect of the suit premises.

2. The original application by Respondent No.1 was for eviction of Respondent No.2 under Section 24 of the Maharashtra Rent Control Act ("the Act") before the competent authority. The competent authority decreed the eviction suit and ordered Respondent No.2 to handover possession of the premises to Respondent No.1. That order was confirmed in appeal by the Additional Commissioner, Konkan Division, Mumbai. These concurrent orders of eviction were challenged by Respondent No.2 before this Court in a writ petition, being Writ Petition No.7918 of 2017. In that writ petition, a civil application was taken out by the Petitioner herein, who intervened in the matter, praying for dismissal of the original eviction case, namely, Case No. 47/2010, filed before the competent authority. The application was on the footing that it was he, the applicant, who was a licensee of the premises, and not Respondent No.2, who was arraigned as a defendant. This Court, by its order dated 30 July 2018, disposed of both proceedings, namely, the writ petition of Respondent No.2 and the civil application of the Petitioner herein. In so far as the writ petition of Respondent No.2 is concerned, it was held that the documents produced by Respondent No.2 did not show that he was a tenant of the suit premises. The Court, in the premises, found that the authorities below had not committed any error in passing the impugned orders. So far as the civil application of the Petitioner

herein was concerned, it was observed by this Court that the Petitioner had not filed any application before the competent authority or before the Commissioner. Both authorities had concurrently found that it was Respondent No.2, who was inducted as a licensee. The Court observed that in view of Section 24(3) of the Act, the competent authority was precluded from entertaining any claim of whatsoever nature from any person, who was not a licensee in accordance with an agreement of licence in respect of the suit premises. The Court, accordingly, held that there was no question for granting any relief to the Petitioner herein in respect of the suit premises and dismissed his civil application. That order has not been challenged by the Petitioner and has attained finality.

3. The Petitioner's present position as an obstructionist in the application of Respondent No.1 for execution of the decree of eviction against Respondent No.2 has to be viewed in the backdrop of these facts. If the competent authority, as an original forum in an eviction proceeding, was not competent to entertain any claim of whatsoever nature from any person, who was not a licensee according to the agreement of licence, it could hardly entertain any such claim in an execution application. So far as the Petitioner's claim to the suit premises is concerned, this Court has already found in its order passed on Writ Petition No.7918 of 2017 that no such claim could have been entertained by the authority by virtue of Section 24(3) of the Act. If the Petitioner's case that the original eviction proceeding was wrongly instituted against Respondent No.2, arraying him as a licensee in respect of the suit premises, could not be entertained, whether as a licensee or a tenant of the suit premises, there was no way he could agitate the same case as an

obstructionist. If his claim was untenable in the original proceeding for eviction, because he was not a licensee under any agreement of licence, it is difficult to see how it may become tenable in an execution application out of the same proceeding. The Petitioner's claim, as an obstructionist has, accordingly, been correctly rejected by the competent authority and the appellate forum. The orders do not call for any interference under the writ jurisdiction of this Court.

4. Coming now to the companion writ petition, namely, Writ Petition No.8971 of 2019, the claim of the Petitioner therein is practically on the same footing as discussed above, except that it is at the stage of an eviction proceeding rather than at the stage of execution of a decree of eviction. The eviction proceeding is in respect of the same chawl, namely, Moti Thakur Diama Chawl; it is between Respondent No.1 herein (the landlord) and Respondent No.2 (the licensee) in that proceeding. The Petitioner herein has sought to intervene purportedly on the basis that he was in possession of Room No.4 and the eviction proceedings could not be adjudicated without him being joined as a party to it. The competent authority, in its impugned order dated 17 July 2019, has held that it had no jurisdiction to entertain the claim of the Petitioner, since as per Section 24(3) of the Act, no claim could be entertained from any person, who was not a licensee according to the agreement of licence. The competent authority has held that, as an authority hearing a summary proceeding, it was not for it to go into either title or possession of the property, but only to consider the controversy as between the licensor and the licensee and the intervenor was not a necessary party to decide that controversy. No infirmity can be found in the impugned order

passed by the competent authority. As held by this Court, whilst disposing of the civil application of Respondent No.2 herein, who was the Petitioner in the companion petition discussed above, no claim could be entertained under Section 24(3) of the Act on behalf of any person, who was not shown to be a licensee under an agreement of licence. The impugned order of the competent authority in the present petition, thus, does not merit any interference under the writ jurisdiction of this Court.

5. There is, accordingly, no merit in either of the writ petitions. The writ petitions are dismissed.

Smita
Gonsalves

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(S.C. GUPTE, J.)