

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 734 OF 2017

Banarasilal Khushiram Atkan. ... Petitioner.
V/s.
State of Maharashtra and others. ... Respondents.

Mr.G.B.Sabnis i/b. Mr.R.J.Dhond for the petitioner.
Mr.Sukanta Karmakar, AGP for respondent No.1.
Ms.Rebecca Gonsalves for respondent Nos.2 to 4.

CORAM : A.S.OKA AND M.S.SANKLECHA, JJ.

DATE : 13th March 2019

P.C.:

Heard the learned counsel appearing for the petitioner. The petitioner was allowed to occupy a room in the Borivali Centre of Courts of Metropolitan Magistrates in Mumbai for selling stamps. He is occupying the said room from 2006. Perusal of the affidavit-in-reply shows that on 6th January 2006, the petitioner made an application to the learned Chief Metropolitan Magistrate for grant of permission to use the said room. On 13th October 2006, the High Court Administration granted permission to the learned Chief Metropolitan Magistrate to allow the petitioner to use the said room in the Court premises of Borivali Centre as a Stamp Vendor only till 31st December 2006 after obtaining undertaking from him as stated in the said letter. Accordingly, on 17th October 2006, an undertaking on oath was furnished by the petitioner containing a clear undertaking that he will pay the rent/licence fee regularly as may be fixed

by the Public Works Department. The fact of such undertaking on oath given by the petitioner is suppressed by the petitioner. On 2nd March 2007, the High Court Administration granted permission to the learned Chief Metropolitan Magistrate to extend the permission granted to the petitioner till 31st December 2007 on the same terms and conditions. Accordingly, the petitioner executed an agreement dated 24th April 2007. Clause-2 of the said agreement reads thus:

“2. A space has been fixed for opening of a counter at ground floor of Esplanade centre of courts, near the main entrance. It is informed that the space is admeasuring 98 Sq. ft. The rent would be charged as per the direction of the General Administration Department vide G.R. No.शा.का.ज. 1597/प्र.क. 105/97/22 dated 16th October, 2003.”

(Underling supplied)

We must note here that the fact that such an agreement is executed is suppressed from the Court in the main petition. We must also note here that on 28th January 2008, the petitioner executed an undertaking before the Registrar of the Court of the learned Metropolitan Magistrate, a copy of which is annexed as Exhibit-J to the reply filed by the Registrar (Legal) in which the petitioner has undertaken to pay licence fee for every quarter in advance as fixed by the Public Works Department. It is true that there was a delay on the part of the Public Works Department in fixing the rent which was done on 26th September 2014.

2. Thereafter, the petitioner made a request to reduce the amount of rent which was rejected. The petitioner applied for grant of suitable installments. That prayer was also rejected by the Chief Metropolitan Magistrate by order dated 16th November 2016. The said order notes that the petitioner was in arrears of Rs.2,65,373.84 and if the installments as prayed for are granted, it will take at least four years to recover the arrears from the petitioner.

3. The learned counsel appearing for the petitioner submitted that the petitioner was not remembering that he has executed such documents and, therefore, the same are not disclosed. He submitted that if the petitioner was told earlier that he will be required to pay rent of such high amount, the petitioner would not have continued to use the premises.

4. No right is created in favour of the petitioner. He was purely a licensee. He was merely permitted to occupy the premises in the Court only in the light of undertakings given by him. His prayer in the petition is that the rent at enhanced rate should may be taken from him only from the date of fixation. The rates of rent were communicated to the petitioner by Public Works Department on 26th September 2014.

5. After having given unconditional undertakings repeatedly to pay the rent/ licence fee as may be fixed by the Public Works Department, now the petitioner cannot make any grievance about the rent fixed.

6. Hence, no case is made out for entertaining this petition under Article 226 of the Constitution of India. At this stage, the learned counsel appearing for the petitioner prays that a reasonable time may be granted to pay the entire arrears. Considering the peculiar facts and circumstances, we propose to grant a reasonable time to the petitioner.

7. Hence, we pass the following order:

O R D E R

- (i) Writ petition is rejected;
- (ii) We grant six months' time from today to the petitioner to pay the entire arrears of rent/ licence fee amount as fixed by the Public Works Department under the communication dated 26th September 2014;
- (iii) We also make it clear that this order granting time to the petitioner to pay entire arrears of rent/ licence fee shall not be construed as if this Court has permitted the petitioner to occupy the premises in question. It is for the concerned authority to take a decision about continuation of the petitioner in accordance with law.

(M.S.SANKLECHA, J.)

(A.S.OKA, J.)