

Vidta Amin

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

WRIT PETITION (St.) NO. 3738 OF 2020

Prabhakar Umesh Shettigar & Anr.

... **Petitioners**

Vs.

Rakesh Rohira

... **Respondent**

Mr. Amit Gharte for the petitioners.

Mr. Lokesh Zade for the respondent.

CORAM : G.S.KULKARNI, J.

DATE : 30 July 2020

(Through Video Conference)

P.C.

Heard Mr. Gharte, learned counsel for the petitioners and Mr. Zade, learned counsel for the respondent.

2. The order impugned in this petition filed under Articles 226 and 227 of the Constitution of India is an order dated 13 January 2020 passed by the Additional Commissioner, Konkan Division, Mumbai whereby Revision Application as filed by the petitioners (licensees of the premises) against an order dated 21st March, 2018 passed by the Competent Authority constituted under section 24 of Maharashtra Rent Control Act stands dismissed. The respondent-landlord had filed an application under section 24 of the Maharashtra Rent Control Act before the Competent Authority praying for eviction of the petitioner-licensee. In the said application, as per the provisions of Section 43 of the Act, which is a summary procedure, the competent authority passed an order issuing a summons/notice to the petitioners who as

per the requirement of Section 43(4) of the Maharashtra Rent Control Act filed an affidavit stating grounds on which he seeks to contest the application for eviction and obtain a leave to defend. Section 43(4) reads thus:

43. Special procedure for disposal of applications:

(4) (a) The tenant or licensee on whom the summons is duly served in the ordinary way or by registered post in the manner laid down in sub-section (3) shall not contest the prayer for eviction from the premises, unless within thirty days of the service of summons on him as aforesaid, he files an affidavit stating grounds on which he seeks to contest the application for eviction and obtains leave from the Competent Authority as hereinafter provided, and in default of his appearance in pursuance of the summons or his obtaining such leave, the Statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant or the licensee, as the case may be, and the applicant shall be entitled to an order for eviction on the ground aforesaid.

(b) The Competent Authority shall give to the tenant or licensee leave to contest the application if the affidavit filed by the tenant or licensee discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the premises on the ground specified in section 22 or 23 or 24;

(c) Where leave is granted to the tenant or licensee to contest the application, the Competent Authority shall commence the hearing of the application as early as practicable and shall, as far as possible, proceed with the hearing from day to day, and decide the same, as far as may be, within six months of the order granting of such leave to contest the application.”

3. The principal contention of the petitioners praying for leave to defend was that the respondent is not the owner of the premises. Considering the petitioners' case and considering the record, the competent authority recorded a finding that the contention as urged on behalf of the petitioners seeking leave to defend was totally untenable. It was observed by the competent authority that the premises in question were purchased by the respondent under a registered sale agreement dated 26th May 2014 for a total consideration of Rs.50,00,000/- which has been fully paid by the respondent. It was observed

that the said agreement being a registered sale agreement, the respondent was entitled to rely on the said document. In a detailed order as passed by the competent authority, the petitioner's contentions seeking leave to defend were found to be frivolous and untenable and accordingly, by the said order dated 21st March 2018, leave to defend was rejected.

4. This order of the competent authority was carried in Revision by the petitioners. The revision has also met the same fate which came to be rejected by the impugned order dated 13 January 2020. The Revisional Authority has considered all the contentions as urged on behalf of the petitioners and in a detailed order dealing with all the contentions of the petitioners has found it appropriate not to accept the same.

5. Learned counsel for the petitioners in assailing these concurrent findings against the petitioners has a limited submission. He would contend that both the forums below have failed to appreciate in its correct perspective, the provisions of Section 43 of the Maharashtra Rent Control Act. It is his submission that the competent authority has attempted to adjudicate on the merits of the petitioners' case instead of considering the limited issue of whether leave to defend ought to be granted or not. It is submitted that the competent authority was required to examine whether any legitimate defence was raised to defend the proceedings.

6. On the other hand, learned counsel for the respondent would contend that the findings as arrived by both the authorities to reject the grounds of the petitioners in the affidavit seeking leave to defend are appropriately dealt and rightly rejected by both the authorities below. He submitted that the reasoning as set out in the impugned order clearly shows that the competent authority has merely dealt with the contentions as urged on behalf of the petitioners. It is submitted that the contentions are found to be without any merit as also contrary to the record. He submitted that there is no illegality in any of the finding arrived by the competent authority and revisional authority while passing the impugned order.

7. Having heard learned counsel for the parties and having perused the record and more particularly the impugned orders passed by the competent authority and revisional authority, I am of the opinion that there is much substance in the contentions as urged by the learned counsel for the respondent. The scope of interference in the present proceeding filed under Articles 226 and 227 of the Constitution of India is very limited. This Court would not wield powers of an appellate Court to re-appreciate evidence and come to a different conclusion that what was arrived at by the authorities below. The Court can interfere if the findings are patently perverse and of a nature no reasonable body of persons can come to such a conclusion on the material before it. This is surely not such a case in the present facts.

8. I am not persuaded to accept the contentions as urged on behalf of the petitioners that the authority has exceeded the scope of its jurisdiction under section 43. This contention cannot be accepted in as much as on the perusal of the application as made on behalf of the petitioners, it is quite clear that the contention which was raised in the application seeking leave to defend is precisely what was considered by the competent authority. If the competent authority is setting out reasons and more particularly as set out in paragraphs 9 to 12 in considering the very contentions as urged on behalf of the petitioner and has dealt with the same opining that no case would be made out to grant leave to defend, then in that case, in my opinion, there cannot be any error whatsoever in such approach of the competent authority. A contention as urged on behalf of the petitioners being contrary to the record could not have been accepted by both the authorities and has been rightly dealt and rejected by the impugned orders. The revisional authority has also applied its mind on all the issue in passing an elaborate order. I find no merit in the petition. Hence, petition is rejected.

9. This order will be digitally signed by the Private Secretary of this Court. All concerned to act on digitally signed copy of this order.

(G.S.KULKARNI, J.)