

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8193 OF 2019

Mr.Mumtaz Ahmed Shaikh Mohd. Shaikh	]	
Room No. F/N/O/G/7/5/24	]	
Bhartiya Kamla Nagar,	]	
S.M. Road, Salt Pan Road,	]	
Antop Hill, Mumbai – 400 037.	]	... Petitioner.

V/s.

Mrs.Shabnam Murtuza Abdul A Gafoor Shaikh	]	
Shanker Kokate building	]	
2 nd Floor, Room No.3,	]	
Khadipar Rasoolabad, Bhiwandi,	]	
District – Thane.	]	... Respondent

Mr.Shashank Choudhary i/b. Ms.Archana Bhasare, Advocate for Petitioner.
Mr.Bhavesh Parmar i/b. Mr.Devmani Shukla, Advocate for Respondent.

CORAM : A.S. GADKARI, J.

**RESERVED ON : 7th September, 2021.
PRONOUNCED ON : 23rd November, 2021.**

JUDGMENT :-

1. Rule. Rule made returnable forthwith. By consent of learned counsel for respective parties, taken up for final hearing.

Heard Mr.Choudhary, learned counsel for the Petitioner and Mr.Parmar, learned counsel for the Respondent. Perused record.

2. Petitioner, Licencee has invoked jurisdiction of this Court under Article 226 and 227 of the Constitution of India, impugning the concurrent findings recorded by both the Authorities below, constituted under the provisions of Maharashtra Rent Control Act, 1999 (for short, "Rent Act").

By the impugned Order dated 6th May 2019 passed in Appeal/Desk/MRCA/Rev/777/2018, under Section 44 of the Rent Act, the Additional Commissioner, Konkan Division, Mumbai (Revisional Authority) has confirmed the Judgment and Order dated 14th September, 2018 passed by the Competent Authority (Rent Act), Konkan Division, Mumbai in Case No.17 of 2018, under Section 24 of the Rent Act, thereby allowing the said Application filed by the Respondent/licensor.

3. Record reveals that, Respondent and Petitioner entered into and executed a 'Leave and Licence Agreement' dated 22nd September 2008 pertaining to the suit premises of which the Respondent is owner/lawful occupier, for a period commencing from 01/09/2008 upto 01/08/2009. As per the terms and conditions of the Agreement, the Petitioner paid Rs.10,000/- towards security deposit and agreed to pay compensation (including water and electricity bills) to the Respondent. The said Agreement has been duly attested by the Notary, Government of India.

4. It is the case of the Respondent that, the Petitioner failed to comply with the terms and conditions of 'Leave and Licence Agreement' and

paid compensation upto June 2009 only. Respondent therefore on 10th September 2009 issued a notice to the Petitioner and called upon him to handover licenced premises along with arrears of compensation. Petitioner replied the said notice by his reply dated 16th September 2009. Record indicates that, the Petitioner instead of vacating the suit premises filed a Suit bearing S.C. Suit No. 2307 of 2009 in the City Civil Court at Mumbai for injunction against the Respondent. The learned Judge of the City Civil Court, Gr. Mumbai by its Judgment and Order dated 7th October 2015 was pleased to decree the said suit and restrained the Respondent and her husband, who were defendants in the said Suit from interfering or obstructing peaceful possession or enjoyment of the Petitioner from the suit property till he is evicted in due course of law.

5. Respondent thereafter filed an application under Section 24 of Rent Act against the Petitioner for recovery of possession of the suit premises as well as compensation in respect of suit premises, before the Competent Authority (Rent Act), Konkan Division, Mumbai bearing Case No. 17 of 2018. After receipt of notice/summons from the Competent Authority, the Petitioner appeared before it and filed an application for 'Leave To Defend' as contemplated under Section 43(4) of Rent Act. The Competent Authority by its Order dated 14th September 2018 rejected the application of Petitioner for Leave To Defend on the ground that, no triable issues were made out by the

Petitioner to allow him to defend the said application. By a separate Order dated 14th September 2018, the Competent Authority allowed the application filed by Respondent under Section 24 of Rent Act. By the said Order under Section 24 of Rent Act, the Competent Authority directed Petitioner to handover vacant and peaceful possession of the suit premises and to pay arrears of licence fee/compensation till 01/09/2008 @ 1500/- and at double the rate i.e. Rs.3000/- per month till the vacant possession of the suit premises is delivered to the Respondent.

6. Feeling aggrieved by the said Orders dated 14th September 2018 passed under Section 24 of Rent Act so also the Order passed under Section 43(4) of Rent Act thereby rejecting the application of the Petitioner for leave to defend, the Petitioner preferred Revision Application No.777 of 2018 under Section 44 of Rent Act before the Additional Commissioner, Konkan Division, Mumbai. Petitioner raised various grounds before the Revisional Authority including the ground that, the Competent Authority erroneously rejected his application for leave to defend under Section 43(4) of Rent Act. The Revisional Authority by its impugned Order dated 6th May 2019 rejected the said Revision Application and confirmed the Order of Competent Authority in Case No. 17 of 2018.

7. Mr.Choudhary, learned counsel for the Petitioner submitted that, as a matter of fact the Respondent and her husband, namely, Mr.Murtuza

Ahmed Abdul Gafoor jointly had executed an 'Affidavit' and a 'General Power of Attorney' both dated 15th September 1998 in favour of the Petitioner and since then the Petitioner along with his family members was and is staying in the suit premises peacefully. He had also started his business of tailoring therein. That the Respondent subsequently bifurcated the suit premises into two units (i) a commercial unit adm. 39 ft. x 8 square feet and (ii) a residential unit adm. 20 ft. x 8 square feet (suit premises). He submitted that, the husband of Respondent was earlier serving at Saudi Arabia and in the month of June 2008 he came to India. That for preparation of his new passport, the Respondent and her husband requested the Petitioner to prepare fresh documents which would allow them to renew their passports to go for Hajj pilgrimage. He submitted that, taking into consideration the close relations between the Petitioner and Respondent and to oblige her, they executed a Leave and Licence Agreement dated 22nd September 2008. He further submitted that, in view of Order passed by the City Civil Court in S.C. Suit No. 2307 of 2009, the Competent Authority ought not have entertained the application of Respondent under Section 24 of Rent Act as it had lost the said jurisdiction due to the Order of injunction granted by the Civil Court. He further submitted that, the Competent Authority had erroneously rejected his application for leave to defend and therefore the present matter requires remand before the Competent Authority by granting leave to defend to the

Petitioner. He submitted that, there is substantial delay from the date of issuance of notice by the Respondent and her filing of application before the Competent Authority without there being an application for condonation of delay. He therefore prayed that, on these grounds the impugned Order dated 6th May 2019 passed by the Revisional Authority needs to be set-aside by allowing the present Petition.

8. Per contra, Mr.Parmar, learned counsel for Respondent vehemently opposed the Petition and submitted that, it is admitted by the Petitioner that, he executed the said Leave and Licence Agreement dated 22nd September 2008 and has also paid compensation upto June 2009. It is due to the *pendency* of the Civil Suit filed by the Petitioner in the year 2009, Respondent rightly did not approach the Competent Authority till its decision and subsequently Respondent filed application under Section 24 of Rent Act before the Competent Authority and therefore alleged delay in filing said application has been properly accounted for. He therefore prayed that, the present Petition may be dismissed.

9. At the outset, it is to be noted here that, in the said suit filed by the Petitioner, i.e. S.C. Suit No.2307 of 2009, the Civil Court had restrained Respondents and her husband from interfering or obstructing peaceful possession or enjoyment of the suit property mentioned therein till the Petitioner is evicted by due process of law.

It is important to note that, there was no prohibition Order by Civil Court for initiating an action under Section 24 of the Rent Act by the Respondent-landlord. Respondent-landlord has therefore filed the present case against the Petitioner for eviction on the basis of a Leave and Licence Agreement dated 22nd September, 2008 duly executed by the Petitioner and Respondent.

10. Record reveals that, an Affidavit and a General Power of Attorney dated 15th September, 1998 were executed by the Respondent and her husband. The Petitioner is not signatory to the said documents. Petitioner claims ownership of the suit property on the basis of said two documents. If by virtue of said two documents, in fact the ownership rights would have been transferred in favour of the Petitioner by the Respondent and her husband, in that eventuality there was no need for the Petitioner to execute a Leave and Licence Agreement dated 22nd September, 2008, on the basis of which, according to Respondent the Petitioner was given possession of the suit premises. Therefore the plea of the Petitioner that, by virtue of the said two documents, she was put in possession of the suit property as a owner of the same, can not be accepted.

The said two documents are unilaterally executed unregistered documents and therefore title of the suit property can not be held to be transferred in favour of Petitioner. In this background, a spacious plea has

been adopted by the Petitioner for execution of present Leave and Licence Agreement dated 22nd September, 2008, i.e. document on the basis of which Petitioner was put in possession by the Respondent. The Leave and Licence Agreement dated 22nd September, 2008 is a duly notarized document and has been acted upon by the Petitioner. As noted earlier, Petitioner paid monthly compensation towards suit premises up to June 2009 and thereafter discontinued to pay the same.

11. After taking into consideration of the aforesaid facts and perusal of Order dated 14th September, 2018 passed below under Section 43(4) of the Rent Act, the Competent Authority has rightly held that, no triable issues were made out by the Petitioner to allow him to defend the Application by granting leave under Section 43 of the Rent Act. The Competent Authority therefore has rightly rejected the said Application.

12. Perusal of record clearly reveals that, the Respondent has proved his ownership over the suit property by producing an Affidavit dated 13th March, 1995 of Mr. Nasrullah Siddique Khan, who was the predecessor-in-title of the Respondent. In furtherance of the said document, the Respondent was put in actual possession of suit property by the erstwhile owner and the Respondent subsequently executed the present Leave and Licence Agreement dated 22nd September, 2008 with the Petitioner. Record further discloses that, after expiry of Leave and Licence agreement, the Respondent had issued

Notice dated 10th September, 2009 to the Petitioner calling upon him to handover possession along with arrears of compensation. The Petitioner had replied the said notice by his reply dated 16th September 2009, however, failed to vacate the suit premises. The Petitioner has not produced on record any document from which it can be inferred that, he occupies the said premises otherwise than a licensee.

13. The Supreme Court in the case of *Shalini Shyam Shetty & Anr. Vs. Rajendra Shankar Patil*, reported in (2010) 8 SCC 329, has enumerated the principles in the exercise of High Court's jurisdiction under Article 227 of the Constitution of India. It is held that, the High Courts cannot, at the drop of a hat, in exercise of its power under Article 227 of the Constitution, interfere with the Orders of tribunals or courts interior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of the court or tribunal subordinate to it. In cases, where an alternative statutory mode of redressal has been provided, that would also operate as a restraint on the exercise of this power by the High Court. That, the High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of the tribunals and courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

It is further held that, in exercise of its power of superintendence, the High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or courts subordinate to it, is a possible view. In other words, the jurisdiction has to be very sparingly exercised. That, the power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court.

The afore-stated view expressed in the case of *Shalini S. Shetty (Supra)* has been further affirmed by the larger Bench of the Supreme Court in the case of *Radhey Shyam & Anr. Vs. Chhabi Nath and Ors. Reported in (2015) 5 SCC 423*.

14. After considering the material on record, I do not find that the Authorities below have committed any error in allowing the application filed by the respondent under Section 24 of the Act. The Petitioner is not in a position to demonstrate that, the findings recorded by the Authorities below are perverse, being based upon no evidence or that they are contrary to the evidence on record. The Petitioners are also not in a position to demonstrate that no reasonable person would have arrived at the conclusions other than arrived by the Authorities below. No case is made out for invocation of

powers under Article 227 of the Constitution of India.

Hence, Writ Petition fails and the same is dismissed with no order as to costs.

15. Petitioner is directed to comply with directions issued by the Competent Authority by its Order dated 14th September 2018 in Case No.17 of 2018 within a period of 30 days from today, failing which the Respondent will be entitled to adopt appropriate procedure for eviction of the Petitioner from the suit premises.

[A.S. GADKARI, J.]

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