

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

**WRIT PETITION NO. 791 OF 2019
WITH
INTERIM APPLICATION NO. 250 OF 2021**

Mrs. Archana Raju Mankar ..Petitioner
V/s.
Smt. Vimaladevi Omprakash Agarwal & Ors. ..Respondents

Mr. Uday Warunjikar for the Petitioner.
Mr. Abhijeet Kulkarni for the Respondents and the applicants in
IA/250/2021.

**CORAM : C.V. BHADANG, J.
DATE : 10th MARCH, 2021**

PC.

1. The challenge in this petition is to the judgment and order dated 19.08.2018 passed by the Additional Commissioner, Pune Division Pune in Revision Application No. 23 of 2018 by which the Revisional Authority has confirmed the order dated 21.12.2017 passed by the Competent Authority, under the Maharashtra Rent Control Act, 1999 ('the Act' for short). By the order dated 21.12.2017, the application filed by the Applicant/ Petitioner to withdraw the pursis dated 28.06.2017 and for a permission to cross-examine the respondents has been rejected.

2. The Applicant is the original opponent before the Competent Authority, in an application under Section 24 filed by the Respondents for eviction of the Applicant/ Petitioner from the suit premises. The Respondents are the licensors. The Petitioner is occupying the suit premises under a leave and license agreement, upon expiry of which the aforesaid application came to be filed by the Respondents for eviction.

3. It appears that by an order dated 16.09.2016, the competent authority had granted leave to the Petitioner to defend the application inasmuch as in view of the Competent Authority, the mere denial of the Respondents regarding non receipt of the licence fee from February 2015 “cannot decide their claim under Section 24 of the said Act”. Pursuant to the leave granted, the Applicant has filed the written statement opposing the application on various grounds.

4. It appears that on 28.06.2017 a pursis was purportedly filed on behalf of the Applicant stating that she does not want to contest the case any further and the application may accordingly be decided. Subsequently, the Applicant filed “explanation-cum-objection” to the said pursis on 05.12.2017 setting out the

circumstances in which the pursis was allegedly filed. According to the Applicant, the Respondents have received total amount of Rs.3,90,000/- from the Applicant out of which Rs.3,10,000/- has been received on 19.04.2017 and Rs.80,000/- on 08.05.2017, both by demand drafts. According to the Applicant, it was represented that the leave and license agreement shall be renewed and therefore, she has purchased the necessary stamp papers. In short, according to the Applicant, her signature was obtained on the pretext of renewal of leave and license agreement which ultimately turned out to be the pursis as aforesaid. In short, according to the Applicant, there is no conscious execution of the said pursis. Hence, the Applicant sought withdrawal of said pursis.

5. The competent authority rejected the said prayer with the following order.

“ORDER

Both requests of the opponent are time barred as request of withdrawal of pursis dated 28.06.2017 is filed after 6 months and request to cross-examine the Applicant is filed after 1 year. Hence, this application is rejected.”

6. Feeling aggrieved, the Applicant challenged the same before the Revisional Authority, which has confirmed the said order.

7. I have heard the learned Counsel for the parties.

8. In my considered view, the impugned order deserves to be set aside on conditions. It is necessary to note that the competent authority had granted leave to the Applicant to defend the application and even the written statement was filed setting out defence of the Applicant. Thus, this is not a case where at the outset or without seeking any leave or filing written statement, a pursis simplicitor was passed that Applicant does not want to contest/defend the application and same may be decided accordingly. The fact that the Applicant had sought the leave and filed the written statement would make it writ large that Applicant had a defence in the matter which was also delivered upon obtaining of the leave. At this stage, it is neither necessary, nor appropriate to go into the question whether the defence can be ultimately sustained. The question is only about the pursis filed on 28.06.2017. Atleast prima facie it appears that the Applicant had paid total amount of Rs.3,90,000/- by demand drafts and it is in this context a claim is made by the Applicant that there was a representation made that the leave and licence agreement shall be renewed. Considering the over of circumstances, in my considered

view and in the interest of a fair disposal of the application, it is necessary to grant an opportunity to the Applicant to contest the application on the basis of the defence already delivered. Perusal of the order dated 21.12.2017 would show that the permission to withdraw the pursis was not granted only on the ground that it is time barred. No provision setting out any such limitation has been brought to my notice on behalf of the Respondents. Taking an overall view of the matter, I find that the impugned order can be set aside subject to the Petitioner depositing the arrears of licence fee as agreed and continuing to depositing the same every month.

9. In such circumstances, the following order is passed:

ORDER

- i) The petition is allowed.
- ii) The impugned order is hereby set aside, subject to the petitioner depositing the arrears of the licence fee as per the rate agreed, within a period of eight weeks from today and the petitioner continuing to deposit the monthly licence fee every month.
- iii) Deposit of the amount is the condition precedent for disposal of the writ petition in the aforesaid terms.

iv) Rule is made absolute in the aforesaid terms with no order as to costs.

v) Pending Interim Application is disposed of.

C.V. BHADANG, J.