

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.4057 OF 2021

PETITIONER : Elhousie Geramn International Pvt. Ltd. A company registered under the provisions of Indian Companies Act, 2013, having its registered office at flat No.102, Rachana Cooperative Housing Society, Ramdaspath, Nagpur through its Director, Viz. Ajay Ramchandra Uttarwar, Aged 41 Yrs.; Occu.-Business; R/o Flat No.903, Ninth Floor, Indranil Heights, Plot No.82A and 82B, Mouza-Lendra, Rahate Colony, Nagpur

VERSUS

RESPONDENTS : 1. Ashish S/o Narindermohan Malhotra, Age 54 Yrs. Occ.-Business
2. Sonia W/o Ashish Malhotra, Age 51 Yrs. Occ. Business

Both (1) & (2) R/o 4764, Garnet Circle, Stow, Ohio, 44224, United States of America (USA)

Both (1) & (2) acting through their Constituted power of attorney holder Rajesh Ramkumar Dixit, Age: 52 years, Occ.: Business, R/o near Ramani Lawn, Gondia-Tiroda, Road, at & Post Bhagat Tola, Tahsil and District Gondia

Shri. R. S. Giripunje, Advocate for Petitioner
Shri. A. Vastani, Advocate for the Respondents.

CORAM : N. B. SURYAWANSHI, J.

DATE : 20.10.2021.

JUDGMENT

RULE. Rule made returnable forthwith.

Heard finally with the consent of the parties.

2. This petition challenges the order dated 21.09.2021 (Annexure-H) passed below Exh-51 by the Competent Authority, Maharashtra Rent Control Act Court, Nagpur Division, Nagpur, in Eviction Application No.02 of 2021, thereby rejecting the prayer of Applicant/Petitioner for amendment of their defence/say to contest the matter filed by the Respondents.

3. The Respondents filed the said proceedings before the Competent Authority for recovery of possession of Flat No.903, Indraneel Heights, Rahate Colony, Nagpur, which was given on leave and license to the Petitioner by agreement dated 14.12.2016. The license period was upto 31.10.2020. The Petitioner is a

Company registered under the provisions of the Indian Companies Act, 2013, and is operating through its Director - Ajay Ramchandra Uttarwar.

4. The Petitioner appeared in the said proceedings and resisted the claim of the Respondents by filing defence statement. The affidavit of examination in chief of the Respondents was filed on record. Thereafter, Application for leave to defence was filed by the Petitioner contending therein that earlier the matter was being persuaded through another Advocate, who was provided with all the relevant documents and detailed information in respect of the matter. There was some confusion in respect of the sale amount of the flat in question, which is mentioned as Rs.52,25,000/- instead of Rs.74,00,000/-, which is the actual amount of the sale value of the flat in question. For which, the flat was agreed to be sold by the Respondents to Ashish Uttarwar. The said mistake was realized at the time of arguments on Application below Exh-5 in Regular Civil Suit No.754 of 2020, and the said error needs to be corrected. There are also certain cut and paste typographical errors and

mistakes, which appeared in the suit and needs to be altered accordingly. Certain facts which surfaced during continuance of the suit are also required to be put-forth due to change circumstances, so as to decide and determine the real controversy between the parties, which goes to the very root of the present suit. In that view of the matter, the Petitioner proposed to alter and amend the pleadings in the plaint in Regular Civil Suit No.754 of 2020 and, since similar contingency exists in the present proceedings, the defence accordingly needs to be amended, as per the proposed amendment.

5. The said Application was resisted by the Respondents by filing Application for amendment as framed and filed is not maintainable in law. The Competent Authority rejected the said Application. The Petitioner is aggrieved by the rejection order.

6. Heard the learned Advocate for the Petitioner and the learned Advocate for the Respondents.

7. The learned Advocate for the Petitioner strenuously submitted that the Competent Authority has committed an error in rejecting the Application for amendment on the ground that the Application for amendment is not maintainable and the proposed amendment to amend the say/defence (Exh-33) is beyond jurisdiction of the Authority. By relying on Section 43(5) of the Maharashtra Rent Control Act, 1999 (for short, "the said Act"), he submits that the Competent Authority is having the powers of small causes Court, and therefore, the amendment Application filed by the Petitioner was maintainable and the same ought to have been allowed by the said Authority, as the amendment was necessary for deciding the real controversy between the parties. In terms of Section 42 of the said Act, an Application needs to be submitted to the Competent Authority, signed and verified in a manner provided in Rules 14 and 15 of Order VI of the First Schedule of the Code of Civil Procedure, 1908, as if it were a plaint. Therefore, the Authority has jurisdiction to entertain the Application for amendment. He therefore submitted that the impugned order is unsustainable and the same

may be quashed and set aside and the amendment Application (Exh-51) may be allowed.

8. Per contra, the learned Advocate for the Respondents submitted that the Application has been rightly rejected by the Competent Authority by placing reliance in Section 24(3) of the said Act. He submitted that the Eviction Application No.02 of 2021, is filed against the Petitioner/Company, which is a juristic person. License agreement was executed by the Company through the Director – Ajay Uttarwar, so the flat was given on license to the Company. Regular Civil Suit No.754 of 2020 is filed by Ajay Uttarwar in his individual capacity for the transaction allegedly entered with the Respondents, that has nothing to do with the present proceedings. The present proceeding is filed seeking possession of the flat in question from the Company. In that view of the matter, the proposed amendment was not relevant for the decision of the proceedings before the Competent Authority. By placing reliance in *Surendra B. Agarwal and another .vs. AML Merchandising Pvt. Ltd., 2010(1) Mh.L.J, AMI Merchandising Pvt. Ltd. .vs. State of*

Maharashtra and others, 2014(3) Mh.L.J. and Arjees Wool & Fur Industries Pvt. Ltd. and others .vs. Allahabad Bank, he submitted that the Competent Authority was justified in rejecting the Application for amendment. He therefore submitted that there is no merit in the petition and the same is liable to be dismissed.

9. It is not in dispute that the Respondents have filed an Application under Section 24 of the said Act for recovery of possession of the licensed premises from the Petitioner/Company. Admittedly, Ajay Uttarwar/Director of the Petitioner/Company has entered into the alleged transaction of sale of the flat in question with the Respondents in his individual capacity. Ajay Uttarwar in his individual capacity issued two legal notices to the Respondents, seeking execution of the sale deed of the flat in question. He thereafter filed Regular Civil Suit No.754 of 2020 for specific performance of the contract, seeking direction to the Respondents to execute the transfer deed of the flat in question.

10. Section 24(3) of the said Act, confers limited jurisdiction on the Competent Authority. The proceedings are between the landlord/licensor and the licensee and the Competent Authority is not entitled to entertain the claim of any third party, who is not a licensee. In the present case, admittedly, the Petitioner/Company is a licensee and the Respondents are licensor. In that view of the matter, the pendency of the suit filed by the Director - Ajay Uttarwar in individual capacity against the Respondents in respect of the flat in question would not affect the jurisdiction of the Competent Authority to decide the Application and in the said Application, the claim of Ajay Uttarwar, which he is trying to raise by way of amendment Application, cannot be entertained by the Competent Authority.

11. The Competent Authority was justified in coming to the conclusion that in view of the provisions of Section 24(3) of the said Act, the claim of any other person, who according to the license agreement is not a licensee, cannot be entertained and Sub-clause (b) of Section 24 of the said Act, provides that the agreement

for license in writing shall be conclusive evidence of the facts stated therein. The Authority was right in concluding that no other issue other than the issues mentioned in Section 24 of the said Act, are triable by it.

12. This Court in Surendra B Agrawal (*supra*) held that :

13. “If the third party who has filed the suit for specific performance succeeds, it is obvious that on the basis of the said decree the third party can take appropriate steps.

.....

15. The learned Additional Commissioner was concerned with the legality and propriety of the order passed by the Competent Authority of declining to grant leave to defend and the consequential order of eviction. The learned Additional Commissioner has not really not gone into the question of legality and propriety of the order passed by the Competent Authority of declining to grant leave to defend. He has completely misdirected himself by going into other issue relating to rights claimed by Mr. Modi. He has completely ignored the limited scope of the proceedings under Section 24 of the said Act. In my view, the impugned judgment and order of the learned Additional Commissioner is perverse.”

In *Ami Merchandising (supra)*, this Court followed

the ratio in Surendra B. Agrawal (*supra*).

13. Taking into consideration the aforestated ratio and the reasons assigned by the Competent Authority while rejecting the Application, no error or perversity is found in the order impugned in the present petition. The petition is being devoid of any merits. The petition is therefore **dismissed**.

Rule discharged with no order as to costs.

(N. B. SURYAWANSHI, J.)