

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

**WRIT PETITION NO.7934 OF 2022
WITH
WRIT PETITION NO.8137 OF 2022**

Priti Dhananjay Shah

..Petitioner

Versus

The State of Maharashtra and Ors.

..Respondents

Mr. Piyush M. Shah a/w Dishang J. Shah & Chirag M. Unadkat, for the Petitioner in both Petitions.

Mr. C. D. Mali, AGP for Respondent Nos.1 to 3/State.

Mr. Sunil Chaturvedi i/by K. V. Chheda & Co., for the Respondent Nos.4 & 5.

CORAM : NITIN W. SAMBRE, J.

DATE : 7th JULY, 2022

P.C.

1. Based on leave and licence agreement dated 14th December, 2018, proceedings under Section 24 of the Maharashtra Rent Control Act were taken out by the respondent/licensor which were answered against the petitioner. An appeal before the Konkan Division also came to be dismissed which was proceeded with an order of refusal to grant leave to defend under Section 43 of the said Act.

2. In execution, since the petitioner claimed to be threatened with execution of eviction warrant, I am

informed that an undertaking is given by the petitioner that he shall be vacating both these flats i.e. Flat Nos.701 and 702 which are subject matter of both these petitions respectively by 31st July, 2022.

3. In this background, while assailing the orders passed by both the Courts below Mr. Shah would urge that at the behest of petitioner a suit for specific performance is pending before this Court. He would urge that though this was oral agreement of purchase of both flats so as to avoid further complications a proforma loan agreement was entered into with the father of plaintiff in relation to both the properties. The loan agreement though speaks of payment of amount of Rs.40,00,000/-, however, the said amount was towards advance/part consideration to be received by the respondent/plaintiff. He would further urge that even if the period of leave and licence was to expire on 14th January, 2001, the petitioner remained in possession of both these flats by virtue of permissive possession under the oral agreement of sale as referred above. In the aforesaid background, according to him, even if this Court vide order dated 5th October, 2021 has permitted the respondent/plaintiff to move for eviction of the petitioner in accordance with law, the proceedings under the provisions of Maharashtra Rent Act were not maintainable.

4. His contentions are, out of amount of Rs.66,00,000/- which is outstanding towards arrears of licence fees, already amount of Rs.33,00,000/- is deposited in addition to TDS of Rs.13,00,000/- towards rent paid to the respondent. He would further claim that as against leave and licence agreement Rs.10,00,000/- each were deposited with the respondent towards security deposit. As such, it is claimed that already an amount of Rs.66,00,000/- towards the dues recoverable as licence fees is secured. In this background, his contentions are, the Court below committed an error in awarding accommodation charges double the licence fees which this Court must appreciate and reduce. He volunteers to pay accommodation charges on the licence fees.

5. The prayer is opposed on the ground that the amount of Rs.40,00,000/- is already paid to the petitioner by the father of the respondent in response to the Negotiable Instruments Act proceedings.

6. I have appreciated the aforesaid submissions.

7. The fact that the proceedings under Section 24 of the Act are maintainable as regards eviction of the petitioner in the light of the order of this Court dated 5th October, 2021 passed in Suit No.49 of 2021 wherein respondent/landlord was directed not to evict the petitioner

without following due process of law.

8. In this background, what can be noticed is even if the suit of the petitioner for specific performance against the respondent/plaintiff is pending adjudication before this Court, there is no injunction in operation against the respondent not to evict the petitioner, rather the Court has permitted such eviction to be taken recourse to by following due process. Apart from above, this Court has to be sensitive to the fact that petitioner has furnished an undertaking to the Executing Court that the possession of the flats will be handed over by 31st July, 2022.

9. In the aforesaid background, if we appreciate the claim put forth by Mr. Shah as regards penalty as to double the amount of licence fees saddled on him, the fact remains that such relief is based on provision in the statute and order to that effect appears to be based on the leave and licence agreement dated 14th December, 2018.

10. The fact remains that the petitioner has already received the amount of loan as is claimed to have been shown to be advanced to the father of the respondent though same is claimed to be towards earnest money, a fact which is of great significance to be considered against the petitioner in the matter of grant of specific performance based on oral agreement.

11. Mr. Shah though has canvassed that leave to defend was rejected for unreasonable cause, however, it has to be noted that the licence period has admittedly over on 14th January, 2021, subsequent thereto by way of afterthought petitioner has taken out suit for specific performance in February, 2021 i.e. after the licence period has expired.

12. The aforesaid facts have rather prevailed before the authorities below while holding against the petitioner as regards leave to defend.

13. In this background, in my opinion, no interference is called for. The petitions as such fails, dismissed.

[NITIN W. SAMBRE, J.]