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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 9397 OF 2021

PURSHOTTAM DAULAT MAHIRE

....PETITIONER

V/s.

SMT. KAMAL WD/O. VILAS BHOIR AND ORS

..RESPONDENTS

Ms. Neeta Karnik i/b Sangharsh Waghmare Advocate for the
Petitioner

Mr. R. S. Deshpande a/w Vijay Thakur a/w Kamar Ali Shaikh for
Respondent nos. 1 to 5

Smt. Madhubala Kajle Counsel for Respondent nos. 6 & 7 'B' panel.

CORAM : NITIN W. SAMBRE, J.

DATE: MARCH 7, 2022.

P.C.:

1) An application under Section 24 of the Maharashtra Rent Control Act, 1999 ("Rent Act" for short) for eviction of licensee being Application No.7 of 2020 was taken out before the Competent Authority, Bandra, Mumbai by the Respondent/owner against the Petitioner/licensee. In the said proceedings, application Exh.10 came to be moved by the Petitioner for grant of leave to defend. The said

prayer for leave to defend under Section 43(4)(a) of the Rent Act came to be rejected vide reasoned order dated 16th March, 2021 passed by the Respondent No.6 authority. As a consequence of above, the eviction application being Application No.7 of 2020 came to be decided against the Petitioner on 16th March, 2021 by the Respondent No.6 thereby directing the Petitioner to vacate the suit premises and make payment of arrears of licence fees. The Petitioner feeling aggrieved, approached Respondent No.7 i.e. Additional Commissioner, Konkan Division, Mumbai questioning the order in revision under Section 44 of the Rent Act. The said authority considered the rival submissions of the parties to the present petition i.e. licensor and licensee vide order impugned rejected the revision on 30th November, 2021. As such feeling aggrieved by these orders, the Petitioner/licensee has preferred this petition.

2) The contentions of Ms. Karnik, learned counsel for the Petitioner are, even if the Suit preferred by the Petitioner-tenant seeking declaration under the Maharashtra Rent Control Act that the Petitioner is directed tenant under the said provisions and is governed by the provisions of Maharashtra Rent Control Act, she

would claim that Appeal against such dismissal of the Suit for declaration of the Suit for declaration is pending adjudication before the learned District Judge. According to her, since the Appeal is continuation of the Suit and the important issue as regards status of the Petitioner as tenant is subjudicied before the competent Civil Court, authorities below ought not to have entertained the proceedings for eviction based on document of leave and licence. Her further contention is, Petitioner's claim was about non existence of any such relation viz. licensor and licensee relationship. She would invite my attention to the reply tendered by the Petitioner to the Application for eviction and would urge that the Petitioner has also come out with a case of fraud being practiced. In that view of the matter, according to her, findings recorded by the Court below are contrary to the documentary evidence on record so also pleadings and the claim in the Suit for declaration being R.C.S. No. 482/2005. She would further claim that even if the aforesaid Suit is dismissed, findings recorded therein will not operate as res-judicata inter-se between the parties as the issues which were canvassed are altogether different than the one which were considered in the eviction proceedings which lead to the passing of the impugned

orders. Ms. Karnik would also invite attention of this Court to the documentary evidence placed on record so as to claim that the Petitioner is a tenant since 1988 in the Suit property which fact is ignored by the Court below while passing orders impugned.

3) The contentions of learned counsel for the Petitioner are, the Regular Civil Suit No.482 of 2005 initiated by the Petitioner seeking declaration as a tenant under Rent Act and as such protection as a tenant conferred under the said act even if is dismissed on 14th August, 2017, Civil Appeal under Section 96 of the CPC is pending before the learned District Judge. As such according to her, the issue of status of the Petitioner as a tenant is subjudice before the competent Civil Court, as the appeal is in continuation of the suit. In addition, her further contentions are, the authorities below have committed an error in rejecting the prayer for leave to defend as the aforesaid pendency of appeal before the District Judge and its consequences are failed to be appreciated. In the said background, the contentions are, the orders impugned are liable to be quashed and set aside and the proceedings are liable to be kept in abeyance till the pending appeal is decided.

4) Mr. Shaikh, learned counsel appearing for Respondent-Landlord would oppose the claim. According to him, in pending Civil Appeal against dismissal of the Suit, claim of the Petitioner thereby seeking declaration in the nature of protection under the Maharashtra Rent Control Act, will not put an embargo on the right of the Respondent-Landlord to initiate proceedings as there is no interim relief in operation in favour of the Petitioner. He would further claim that scope of appreciation in extraordinary jurisdiction against both the orders impugned is very limited and the Petitioner has failed to demonstrate any illegality in the orders impugned as according to him, Petitioner has failed to discharge the burden. As such, according to him, Petition is liable to be dismissed.

5) Considered rival submissions.

6) Petitioner was Plaintiff in Regular Civil Suit No. 482 of 2005. The said suit for declaration that Petitioner/Plaintiff is tenant of legal representative of late Ganpat Bhoir i.e. Respondent herein, as such, is entitled for protection under the Rent Control Act, 1999 was decided on 14/08/2017. Against same, I am informed that appeal is pending before District Judge. In the said suit,

Respondents/Defendants issued notice on 24/1/2005 to the Petitioner stating that the Petitioner is a licensee, whereas the Petitioner claimed that he is not licensee but a tenant as defined under the Maharashtra Rent Control Act. In the said Suit Respondent(landlord) claimed that based on leave and license agreement dated 08/04/1999, Petitioner cannot claim such protection. As such, existence of leave and license agreement was well within the knowledge of the present Petitioner since 2005 as is apparent from the pleadings in the said Suit. It was always open for the Petitioner to raise a plea of fraud or execution of bogus leave and license agreement dated 08/04/1999. In the said Suit, no such relief of declaration that leave and license agreement dated 08/04/1999 is sham and bogus document was claimed by the present Petitioner. After dismissal of the suit, even in pending appeal, there is no interim relief in operation in favour of the Petitioner. That being so, fact remains that Petitioner in the present proceedings by way of afterthought has raised a plea that leave and license agreement dated 08/04/1999 is sham and bogus document.

7) If Petitioner/tenant has come out with such a plea, burden is

on the Petitioner to prove the same and in both proceedings i.e. proceeding which led to passing of the order impugned, so also in Regular Civil Suit No.482 of 2005, the Petitioner has failed to discharge his burden. That being so, said contention raised by the Petitioner that he requires protection of Maharashtra Rent Control Act and leave and license agreement is a bogus document cannot be inferred to be established and as such authorities below were justified in passing the orders impugned.

8) As far as the next contention that the appeal against the dismissal of the suit in relation to protection of the right of the Petitioner under Rent Act is pending and as such the present proceedings are liable to be stayed is concerned, the fact remains that neither any injunction is in favour of the Petitioner against the Respondents restraining them from evicting the Petitioner in accordance with law is in operation or otherwise. Mere pendency of appeal before the learned District Judge will not operate as an embargo on the rights of the Respondents to seek eviction/possession of the suit property from the Petitioner. As such, said contentions are also rejected.

9) In that view of the matter, since both the authorities having concurrently held against the Petitioner, I hardly see any justifiable reason which warrants interference in the orders impugned.

10) That being so, no case for interference is made out in extraordinary jurisdiction. Petition as such fails and same stands dismissed.

[NITIN W. SAMBRE, J.]