

Dusane

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

WRIT PETITION NO.6065 OF 2023

Diman Navinchandra Kantharia ...Petitioner

V/s.

The Additional Commissioner ...Respondents
Konkan Division, Mumbai & Ors.

Mr. Omprakash Pandey a/w Ms. Pramila Prajapati
and Ms. Suchita Pandey for Petitioner.

Mr. Shrikant Rathi for Respondent No. 3.

CORAM: MADHAV J. JAMDAR, J.

DATE: 26th July 2023

P.C.:

1. Heard Mr. Pandey, learned Counsel appearing for the Petitioner and Mr. Rathi, learned Counsel appearing for Respondent No. 3.

2. The Petitioner is the brother of Respondent No.3. Respondent No. 3 has filed Case No. 140/21 under Section 24 of the Maharashtra Rent Control Act, 1999 before the Competent Authority, Konkan Division, at Bandra, Mumbai. The said application was filed by Respondent No. 3 against the present Petitioner. However, learned Counsel appearing for the Petitioner

has pointed out leave and license agreement dated 3rd December 2015. It is one of the contention of the learned Counsel appearing for the Petitioner that the signatures appearing on said leave and license agreement are not the signatures of said Meenashi Kantharia and Diman Kantharia.

3. It is significant to note that the said leave and license agreement was executed by Defendant No. 3 as licensor with Meenashi Dhiman Kantharia and Diman Navindhandra Kantharia as the licensees. However, said Section 24 application has been filed only against said Mr. Diman Kantharia i.e the present Petitioner. Faced with this difficulty that although the leave and license agreement was executed with the Petitioner and his wife, the application under Section 24 seeking eviction under Maharashtra Rent Control Act was filed in the Court of Competent Authority, Rent Control, Konkan Division, Mumbai only against the Petitioner, the learned Counsel appearing for Respondent No. 3 states that the matter be remanded back by setting aside the impugned orders and he be granted leave to file amendment application. It is recorded that the said statement has been made by Mr. Rathi, learned Counsel appearing for the Respondent No. 3 on the instructions of the Respondent No. 3, who is personally present in the Court.

4. For above reasons, following order is passed:

O R D E R

(i) By consent of the parties, order dated 18th January 2022 passed below Exhibit 9 i.e. application for leave to defend in Eviction Application No.140 of 2021, order dated 18th January 2022 passed in Eviction Application No.140 of 2021 by the Competent Authority, Rent Control Act, Konkan Division, Mumbai as well as order dated 28th September 2022 passed by Additional Commissioner, Konkan Division, Mumbai in Appeal/Desk/MRCA/Rev/117/2022 are quashed and set aside and said Eviction Application is restored to the file of the Court of Competent Authority, Rent Control Act, Konkan Division, Mumbai.

(ii) Respondent No.3, who is the Applicant in said Eviction Application is at liberty to file appropriate amendment application in said Eviction Application No. 140 of 2021. If such amendment application is filed by the Respondent No. 3 i.e. the Applicant in said Eviction Application No.140 of 2021, the learned Competent Authority to decide the same in accordance with law and thereafter proceed with said Eviction Application in accordance with law.

(iii) The Contentions of both the parties with respect to the said amendment application and also on the merits are expressly kept open.

5. The Writ Petition is disposed of in above terms with no order as to costs.

BHALCHANDRA
GOPAL
DUSANE

(MADHAV J. JAMDAR, J.)

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BHALCHANDRA
GOPAL DUSANE
Date: 2023.07.28
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