



Harish

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.15837 OF 2022

Yashwant Shripat More

...Petitioner

Versus

Kamal Vilas Bhoir & Ors.

...Respondents

Adv. Sham Thakur for the Petitioner.

Adv. R. S Deshpande a/w Adv. Vijay Thakur a/w Adv. Kajal
Wadhvana i/b Thakur and Associates for the Respondents.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : DECEMBER 5, 2023

P. C. :

1. The challenge in the Petition is to the Judgment and Order dated 11th November, 2022 passed by the Revisional Authority in Revision Application No. 208 of 2022 rejecting the Revision Application filed by the Petitioner.

2. Briefly stated the facts of the case are that an Eviction Application came to be filed under Section 24 of the Maharashtra Rent Control Act, 1996 seeking eviction on the ground that there was a Leave and License Agreement dated 8th April, 1999 executed between the parties which period has expired by efflux of time and Petitioner has refused to vacate the premises. The prayer in the Application seeks *inter alia* a direction to

handover the vacant and peaceful possession of the suit premises i.e. Room in Bhoirwadi, Bhoir Chawl, situated at, Pokharan Road No. 1, Khopat, Thane. To the Application, the Leave and License Agreement dated 8th April 1999 executed between the Respondent Ganpat Bhoir and the Petitioner Yashwant More is annexed. The description of the property given in paragraph No. 1 of the Leave and License Agreement is one room in “Shalan Building” and the term of the Agreement is from 8th April, 1999 to 7th March, 2000.

3. To this Application for eviction an Application for leave to defend was filed by the Petitioner, putting forth the specific case that the Petitioner is the tenant of the Respondent in respect of a premises being Room No. 4, Bhoir Chawl, Bhoir Wadi, Pokharan, Road No. 1, Khopat, Thane and that there is no Leave and License Agreement executed between the parties. In paragraph No. 22 it is pleaded that there is no description of the suit property in the Leave and License Agreement which differs from the tenanted premises of the Respondent.

4. The Competent Authority by order dated 29th March, 2022, rejected the Application for leave to defend on the ground that there are no triable issues of law and fact involved and by order of even date rejected the Application for sending the Leave and License Agreement for verification to the hand writing expert. By Judgment of even date i.e. 29th

March, 2022, the Application was allowed and the Petitioner was directed to handover the vacant and peaceful possession of room admeasuring 10X10 sq. ft. at Bhoir Wadi, Bhoir Chawl, Pokharan, Raod No. 1, Khopat, Thane within 30 days with a further direction to pay the license fee at double the rate from April, 2008 till handing over possession of the Application premises. As against this, Revision Application was preferred by the Petitioner which came to be dismissed by the impugned order.

5. Heard Mr. Thakur, learned counsel for the Petitioner and Mr. Deshpande, learned counsel for the Respondent.

6. Learned counsel appearing for the Petitioner has taken this Court through the description of the suit premises in the Leave & License Agreement and would submit that the license, if any, was in respect of the premises situated in “Shalan Building”, whereas the direction for eviction is sought in respect of the premises described as Room in Bhoir Wadi, Bhoir Chawl situated at Pokharan, Road No. 1, Khopat, Thane. He submits that the Trial Court has rejected the leave to defend without taking into consideration the discrepancy in description of the suit premises. He would further submit that without rendering any finding as regards the discrepancy as mentioned in the Leave and License Agreement and the Application for eviction, the Revisional Authority has rejected the Application.

7. *Per contra*, learned counsel for the Respondent submits that the premises being “Shalan Building” as well as Bhoir Chawl are part of the same property. He further submits that there was a typographical error in the Leave and License Agreement wherein it was mentioned as Shalan Building where as the premises in question is a room in the chawl i.e. Bhoirwadi. He has invited the attention of this Court to the address of the Petitioner has been given in the RCS suit filed by the Petitioner in which the address of the Petitioner has been given as Bhoir Wadi, Bhoir Chawl which is the same address given in the Eviction Application. He further submits that the Competent Authority as well as the Revisional Authority has considered that the suit summons was sent at the correct address and pursuant thereto, the Respondent had appeared and as such, the leave to defend was rightly rejected and the direction to hand over possession was passed.

8. Considered the submissions and perused the record.

9. The Eviction Application has been filed under the provision of Section 24 of the Maharashtra Rent Control Act which are summary in nature. It is upon a satisfaction arrived at by the Competent Authority that there is a leave and License agreement executed between the parties in respect of the suit premises which license has expired that an order for

eviction can be passed. It is therefore necessary that there is a Leave and License Agreement executed in respect of the suit premises between the parties. The satisfaction is dependent on the factual position of existence of Leave and License Agreement and the expiry of the term of the license.

10. In the present case, if the Application for eviction is perused, in the description in paragraph No. 3 it is pleaded that the Respondent had entered into a Leave and License Agreement in respect of a room of area 10X10 ft. with the Petitioner. The Leave and License Agreement is annexed at page No. 46 would indicate that the same in respect of the room of “Shalan Building”. In the Application seeking leave to defend, a specific case has been put forward that the Petitioner is a tenant in respect of the premises known as Bhoir Chawl and that the suit RCS No. 482 of 2005 has been filed which has been dismissed as against which, an appeal is pending. It was specifically pleaded that there is a discrepancy in the description of the suit premises as mentioned in the Leave and License Agreement and in the Application for eviction. While rejecting application for the leave to defend, the said contentions were not dealt with by the Competent Authority. The provisions of Section 43(4)(b) of the Maharashtra Rent Control Act permits the licensee leave to defend in event the facts which would dis-entitle the licensor to seek possession are

put forth in the Application. Without considering that the description of the suit premises differs in the Application for Leave and License Agreement as against the Application for eviction, the Competent Authority has rejected the leave to defend on the specious ground that the summons was served at the right address. The submission that there was a typographical error in the Leave and License Agreement as well as the contention that there is no Leave and License Agreement between the parties and in fact there is tenancy created coupled with the discrepancy in the suit premises description necessitated that leave be given to contest the application. The Revisional Authority without considering the relevant facts have upheld the findings of the Competent Authority on the basis that the ownership is not disputed. The Revisional Authority noted that the RCS Suit No. 482 of 2005 has been withdrawn by the Respondent but failed to notice that the said proceedings were in respect of the premises described as a room in Bhoir Chawl whereas Application under Section 24 sought recovery of possession of a premises based on a Leave and License Agreement which described the suit premises as room in “Shalan Building”. Whether the premises forming part of the Leave and License Agreement and the one in occupation of the Petitioner are one and the same is required to be adjudicated. The Petitioner has also raised a dispute about the Leave and License Agreement by submitting that the

same is a forgery. It appears that the facts on record would dis-entitle the licensor to recover the possession of the licensed premises.

11. In light of the above, the impugned Judgment and order dated 11th November, 2022 of the Revisional Authority is unsustainable and quashed and set aside. The Application for leave to defend is allowed. The Eviction Application is remanded to the Competent Authority to be decided afresh with leave to Petitioner to contest the Application.

12. At this stage, learned counsel for the Petitioner submits that an amount of Rs. 50,000/- has been deposited in this Court pursuant to the order of 18th July, 2023. The deposit of Rs. 50,000/- be transferred to the Competent Authority subject to the final order that may be passed by the Competent Authority.

(SHARMILA U. DESHMUKH, J.)