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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

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Writ Petition NO. 5135 OF 2024

Ajaz Khan & Anr.

..Petitioners

Versus

Farid Thanawalla Throu.

POA - Neelesh Deshpande And Anr.

..Respondents

Mr.Jitendra Mishra with Mr.Rupesh Dubey i/b Mr.Nilu J. Mishra
for the Petitioners.

Mr.Ashish Kamat, Senior Counsel with Mr.Anushok Davar,
Adv.V. Pandey, Mr.Nishit Tanna, Adv.Ridhima Mangwankar,
Mr.Mahavir D. i/b V.Pandey for Respondent No.1.

Mr.S.D. Rayrikar, AGP for the State - Respondent No.2.

CORAM : RAJESH S. PATIL, J.

DATE : 12TH APRIL, 2024.

P.C. :-

1. This Writ Petition challenges the impugned order dated 28 August 2023 passed in eviction application filed before the Competent Authority under Section 24 of the Maharashtra Rent Control Act and as confirmed by an order dated 5 February 2024 by the Divisional Commissioner, Konkan Division. So also

the Petition challenges the order dated 27 January 2023, whereby leave to defend was rejected and the revision challenging the rejection of leave to defend was also rejected by the Commissioner, Konkan Division.

2. The parties had entered into a Leave and License Agreement on 25 September 2018, for a license period of two years, which was to end on 24 August 2020. There is no dispute as far as this Leave and License Agreement is concerned.

3. The first Leave and License Agreement was entered into between the Petitioner No.1 licensee and Respondent No.1 as the licensor through constituted attorney one Mr.Mahendra P. Sisodia.

4. Thereafter the second Leave and License Agreement was entered into between the parties on 13 September 2021, for a period starting from 1 September 2021 to 31 August 2022. The license fees payable was at the rate of Rs.75,000/- per month. Thereafter there is mention of the third Leave and License Agreement dated 11 May 2022, which was for the period of 11 months.

5. Mr.Mishra, appeared for the Petitioners and made his submissions.

6. Mr.Mishra submitted that licensee had made payment of an amount of Rs.1.00 crore, as interest free deposit for the third Leave and License Agreement. The said payment was made by the Petitioners to Mr.Mahendra P. Sisodia, as he was the Constituted Attorney of the licensor. He submitted that the said payment was made by a Bank account transfer of Rs.75,00,000/- and cash payment of Rs.25,00,000/-. He submits that the said payment of Rs.1.00 crore was thereafter transferred by Mr.Sisodia to the licensor, who is not staying in India.

7. Mr.Mishra submitted that Respondent No.1, had deliberately and mischievously suppressed the fact about execution of 3rd Leave and License Agreement dated 11 May 2022. He submitted that the Respondent No.1 has never terminated the 3rd Leave and License Agreement nor returned the Security Deposit of Rs.1.00 crore, therefore the Petitioner did not vacate the suit premises. Mr.Mishra submitted that the Writ Petition requires to be admitted and the implementation and

execution of impugned Judgment and Orders, requires to be stayed till hearing and final disposal of Writ Petition.

8. Mr.Ashish Kamat, Senior Counsel appeared for Respondent No.1 / licensor, and made his submissions :

9. Mr.Kamat submitted that on 31 March 2021, Petitioner No.1 was arrested by the police in a narcotic case. Therefore, the 2nd Leave and License Agreement was entered into only between Petitioner No.2 and Respondent No.1's Constituted Attorney Mr.Mahendra P. Sisodia.

10. Mr.Kamat submitted that his client's has disputing that third Leave and License Agreement was entered into on 11 May 2022. He submits that as far as the third Leave and License Agreement is concerned, the licensor had not given any kind of authority to Mr.Mahendra P. Sisodia to enter into a Leave and License Agreement. He submitted that the said Mr.Mahendra P. Sisodia is today present in Court and he is giving instructions to the lawyer appearing for the Petitioners.

11. Mr.Kamat appearing for Respondent No.1 / licensor submits that it is the case of the Petitioners / licensees that they

had filed the suit for injunction before the City Civil Court, Mumbai as mentioned by the licensees in their application for leave to defend. He submits that in the said suit, there is no protection granted to the licensees till today. He further submits that the licensee has also come up with a case that there was oral transaction of purchase of the suit property by the licensees for the alleged amount of Rs.3,50,00,000/-. Mr.Kamat submitted that there was no merits in the Writ Petition and the same should be dismissed with costs.

12. I have heard both the counsel and considered the documents, including the impugned order passed and rejecting the leave to defend and eviction order by the Competent Authority and as confirmed in the Revision by the Commissioner, Konkan Division.

13. The eviction application filed by the licensors is filed on the basis of two Leave and License Agreements i.e. the first Leave and License Agreement and second Leave and License Agreement dated 13 September 2021. There is no reference to the third Leave and License Agreement which according to the

licensees was executed between the parties. There is no dispute that the Leave and License Agreements were signed between the parties. There is also no dispute that as per the terms of the Leave and License Agreements, the licensee period had lapsed. The possession as of today remains with the licensee. The case of the licensee that there is third Leave and License Agreement and pursuant to which they have paid a sum of Rs.1.00 crore, has not been believed by the Competent Authority. In the suit filed for injunction before the City Civil Court, Mumbai, no protection has been granted to the licensees. In fact as per Mr.Kamat no such application was made for seeking any relief before City Civil Court, Mumbai.

14. No case is made out to interfere with the concurrent findings recorded by the Competent Authority and Divisional Commissioner, Konkan Division.

15. The Writ Petition is accordingly dismissed.

(RAJESH S. PATIL, J.)