

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO.1399 OF 2024****Ms Meenakshi Vijay Desai****....Petitioner****V/s.****Rampyare Nanu Yadav****....Respondent**

Mr. Parag Tilak *for the Petitioner.***Mr. Sandeep Mishra** *for the Respondent*

CORAM : SANDEEP V. MARNE, J.**Dated : 3 July 2024.****P.C. :**

1) Challenge in the present petition is to the order dated 27 July 2022 passed by the Additional Commissioner, Konkan Division rejecting the revision application filed by the Petitioner and confirming the order dated 9 September 2021 passed by the Competent Authority (Maharashtra Rent Control Act, 1999)-Konkan Division at Mumbai in Eviction Application No.57 of 2017.

2) I have heard Mr. Tilak, the learned counsel for the Petitioner and Mr. Mishra, the learned counsel for the Respondent.

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3) After having considered the submissions canvassed by the learned counsel for the respective parties and after going through the records of the case, it is seen that the Petitioner was advised to institute Regular Civil Suit No.551 of 2016 before the Court of Civil Judge, Senior Division, Thane seeking a declaration that the Defendant therein was in illegal possession of the suit premises. In the Plaint apparently, the Petitioner/Plaintiff described the Defendant therein as a licensee. On account of such pleadings in the plaint, Defendant therein filed application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (the **Code**) seeking rejection of the plaint. The Trial Court allowed the application on the ground that the Competent Authority under Section 24 of the Maharashtra Rent Control Act, 1999 (**MRC Act**) would have jurisdiction to decide the dispute between licensor and licensee.

4) The Plaintiff accordingly filed Eviction Application No.57 of 2017 before the Competent Authority seeking recovery of possession from the Respondent on the ground that Respondent has been inducted in the suit premises as a licensee. Admittedly, there is no written contract or license. A case of oral license was sought to be made out before the Competent Authority. However, there was no evidence on record of payment of either security deposit or license fee by the Respondent to the Petitioner. On account of failure on the part of the Petitioner to prove existence of license, the Competent Authority could not assume jurisdiction under Section 24 of the MRC Act. Accordingly, the application has met the fate of dismissal by order dated 9 September 2021. In the Revision, the Additional

Commissioner, Konkan Division had concurrently upheld the finding of the Competent Authority.

5) In my view the Petitioner has failed to prove that induction of Respondent in the suit premises was by way of license. In absence of a written Leave and License Agreement, even oral license could not be proved by the Petitioner. Existence of license being the jurisdictional fact, the Competent Authority could not have exercised jurisdiction under Section 24 of the MRC Act. No error therefore could be traced in the orders passed by the Competent Authority and the Additional Commissioner.

6) Mr. Tilak expresses an apprehension that Respondent is approbating and reprobating by getting the suit dismissed claiming that he is licensee and when eviction proceedings are instituted under Section 24 of the MRC Act before the Competent Authority, he claimed that he is not the licensee. In my view, the Respondent has not admitted his capacity as licensee in application filed under Order VII Rule 11 of the Code. He sought rejection of the Plaint only on the basis of averments made in the plaint. Under Order VII Rule 13 of the Code mere rejection of the Plaint under Order VII Rule 11 does not preclude the Plaintiff from presenting a fresh Suit

7) In my view therefore, the Petitioner has remedy of filing fresh Suit to seek recovery of possession from the Respondent by describing him either as a gratuitous licensee or a trespasser. Leaving open the said remedy for the Petitioner, writ petition is disposed of.

[SANDEEP V. MARNE, J.]