

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

WRIT PETITION NO.5994 OF 2024

Snehal Shailesh Borana
V/s.

....*Petitioner*

1. Additional Divisional Commissioner,
Konkan Division, Mumbai and Ors.

2. Competent Authority Konkan
Division (Rent Act)

3. Kiran Kashinath Karanje (HUF)

4. Swati Kiran Karanje

.... *Respondents*

Mr. Mandar Soman i/b. *Mr. Sahil Mahajan for the Petitioner.*

Ms Tejas Kapre, *AGP for Respondent Nos.1 and 2-State.*

Mr. Satish Adsul *for Respondent Nos.3 and 4.*

CORAM : SANDEEP V. MARNE, J.
Judgment Reserved On : 6 August 2024
Judgment Pronounced On :12 August 2024

JUDGMENT:

1) ***Rule.*** Rule is made returnable forthwith. With the consent of the learned counsel appearing for the parties, the Petition is taken up for final disposal.

2) Petitioner has challenged orders dated 2 November 2023 passed by the Competent Authority, Rent Control Act Court, Konkan Division, Mumbai, directing him to handover possession of the Flat to Respondent Nos. 3 and 4 with further direction to pay damages at the rate of double the license fees from

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18 October 2021 till delivery of the possession. The Competent Authority's order dated 2 November 2023 has been confirmed in Revision by Additional Divisional Commissioner, Konkan Division by dismissing Revision Application No.664 of 2023 vide order dated 26 March 2024, which is also subject matter of challenge in the present Petition.

3) Briefly stated, facts of the case, as pleaded by Respondent Nos. 3 and 4 in the eviction application, are that they are the owners of Flat No.1304, Building No.68, Kurla Sahayog Co-operative Housing Society, Nehru Nagar, Kurla (East), Mumbai- 400 024 (**the Flat**). Leave and License Agreement dated 1 December 2019 was executed between Respondent Nos. 3 & 4 and Petitioner granting license in respect of the flat for a period of 22 months commencing from 18 December 2019 to 17 October 2021 for license fees of Rs.33,500/- for first 11 months and Rs.34,500/- for next 11 months. Rs.1,00,000/- was paid by Petitioner to Respondent Nos. 3 and 4 towards security deposit. The leave and license agreement came to be registered on 3 December 2019 in the office of Sub Registrar Mumbai-3. It was averred in the application that Petitioner's husband Mr. Shailesh Borana used to pay the license fees to Respondent Nos. 3 and 4 as mutual understanding between Petitioner and her husband. That Petitioner paid license fees as agreed under the Agreement during the first 11 months tenure. However, in respect of second 11 months' tenure she was irregular in payment of license fees. That Petitioner's husband sent WhatsApp messages falsely claiming payment in the Bank account of Respondent Nos. 3 and 4, which messages turned out to be false after checking the Bank account by Respondent Nos. 3 and 4. According to them, this is how Petitioner committed breach of the terms and conditions of the license. That Petitioner failed to pay the electricity charges, on account of which the electricity supply company issued notices. That the conduct of the Petitioner was source of complaints by the Managing Committee of the Society. Respondent Nos. 3 and

4 therefore issued notice dated 7 June 2021 seeking to terminate the License Agreement. That after receipt of termination notice Petitioner paid Rs.69,000/- in cash in Licensor's Bank account, which did not tally with the amount payable under the License Agreement.

4) It is further averred in the application that instead of vacating the Flat at the end of the license period, Petitioner represented to Respondent Nos. 3 and 4 that she would purchase the premises and would pay double the amount of license fees towards retention of possession of Flat till payment of full and final consideration for the transaction. Accordingly, Agreement for Sale was executed on 28 October 2021 and registered on 1 November 2021. That as per the said Agreement, the entire amount of consideration was to be paid within 60 days from date of registration of the Agreement. That full and final consideration as per the Agreement for Sale was not paid by Petitioner. The Respondent Nos. 3 and 4 pleaded the entire details about the various events and payments made under the Agreement for Sale from time to time. According to them, out of agreed amount of consideration of Rs.1 crore, only Rs.85 lakhs have been received by them, that too after considerable delay and the balance amount of consideration of Rs.15,00,000/- is not paid till date.

5) Respondent Nos. 3 and 4 accordingly filed Application No.224 of 2022 before the Competent Authority by invoking the jurisdiction under Section 24 of the Maharashtra Rent Control Act, 1999 (**MRC Act**) seeking recovery of possession of the Flat and also for recovery of double the amount of license fees of Rs.69,000/- per month from June 2021 as well as for recovery of balance license fees of Rs.36,500/-. Petitioner appeared before the Competent Authority and filed application seeking leave to defend under Section 43 of the MRC Act. The application came to be rejected by the Competent Authority vide order dated 2 November 2023 holding that the issues sought to be raised

by the Petitioner were not triable issues before the Authority. On the same day i.e. 2 November 2023 the Competent Authority proceeded to pass order allowing the application filed by Respondent Nos. 3 and 4 and directed the Petitioner to handover vacant and peaceful possession of the Flat to the Respondent Nos. 3 and 4 within 30 days. Petitioner is further directed to pay damages to the Respondent @ Rs.69,000/- per month from 18 October 2021 till handover of vacant possession of the Flat.

6) Petitioner filed Revision Application No.664 of 2023 before the Additional Divisional Commissioner, Konkan Division, challenging the Competent Authority's order dated 2 November 2023. The Revisional Authority initially granted stay to the eviction order on 26 December 2023. However, the Revisional Authority thereafter proceeded to reject the Revision Application by order dated 26 March 2024.

7) Petitioner has accordingly filed the present Petition challenging the eviction order dated 2 November 2023 passed by the Competent Authority and order dated 26 December 2023 passed by the Revisional Authority.

8) Mr. Soman, the learned counsel appearing for Petitioner would submit that the Competent Authority has erred in exercising jurisdiction under Section 24 of the MRC Act in the present case without appreciating the fact that possession of the Flat by Petitioner is no longer in pursuance of the Leave and License Agreement. He would submit that execution of the registered Agreement for Sale between the parties has invested title in respect of the Flat in her favour. That the reading of covenants of registered Agreement for Sale indicates that it actually is a sale deed. That the only possible grievance of Respondent Nos. 3 and 4 is about alleged non-receipt of balance consideration of Rs.15,00,000/-, which does not automatically invalidate vesting of title in the

Flat in Petitioner. That even the allegation of non-payment of full amount of consideration by Petitioner is false as Respondent Nos. 3 and 4 have accepted not just the balance amount of consideration but amounts over and above the same in cash, which is witnessed by a witness. That the remedy available to Respondent Nos. 3 and 4 *qua* the compliant of non-receipt of full amount of consideration is to sue Petitioner for recovery of balance amount of consideration and the transaction of sale does not get affected only by reasons of non-payment of full amount of consideration.

9) Mr. Soman would further submit that since Petitioner's possession of Flat stems through the Agreement for Sale, she is entitled to protect her possession under Section 53A of the Transfer of Property Act, 1882 (**TP Act**). He would submit that the Respondent Nos. 3 and 4 have already filed S.C. Suit No.484 of 2023 before the City Civil Court seeking various declaratory and injunctive reliefs *qua* the transaction between the parties. That the prayer in the Suit also includes recovery of possession of the Flat. That once jurisdiction of Civil Court is invoked by filing suit *qua* transactions between parties, it is impermissible for the Competent Authority to exercise jurisdiction under Section 24 of the MRC Act. Lastly, Mr. Soman would submit that in addition to the transaction between Petitioner and Respondent Nos. 3 and 4, there is a separate transaction of mortgage in favour of the State Bank of India, which has advanced credit facility in purchase of the Flat. That the mortgage deed has been executed between the Petitioner and the Bank, thereby evidencing divesting of title of Respondent Nos. 3 and 4 in respect of the Flat, and creation of interest of the Bank therein. In such circumstances according to Mr. Soman, the Competent Authority could not have exercised summary jurisdiction for ordering Petitioner's eviction by rejecting leave to defend. Without prejudice to the rights and contentions of Petitioner, Mr. Soman would submit that though the entire amount of consideration is already paid, she is willing either to pay to

Respondent Nos. 3 and 4 or deposit before the City Civil Court balance consideration of Rs.15,00,000/- to show her *bonafides*. He would accordingly pray for setting aside the impugned orders passed by the Competent Authority and Revisional Authority.

10) Petition is opposed by Mr. Adsul, the learned counsel appearing for Respondent Nos. 3 and 4. He would submit that possession of the Flat by Petitioner is through Leave and License Agreement and that the same has no relation with the Agreement for Sale. That what is executed between the parties is mere Agreement, which has not fructified into transaction of Sale and Respondent Nos. 3 and 4 still continue to be owners of the Flat. That therefore no right is created in Petitioner's favour in respect of the Flat. That Agreement for Sale is executed after expiration of Leave and License Agreement under a specific promise to pay double the amount of license fees. Inviting my attention to clause -H of the Agreement for Sale, Mr. Adsul would submit that failure to pay balance amount of consideration within 60 days empowered Respondent Nos. 3 and 4 to terminate the Agreement after deducting amount of Rs.1,00,000/- towards compensation. That Petitioner has cheated the owners, by falsely representing them that Rs.75,00,000/- would be paid to them through bank loan by showing sanction letter of loan of Rs.75,00,000/-. That when they approached the Bank, they were informed that Petitioner had already pocketed amount of Rs.15,00,000/- to herself and only Rs.60,00,000/- was paid by the Bank. That the Agreement for Sale was terminated by Notice dated 22 November 2021, but the Bank still proceeded to create a mortgage thereafter with full knowledge of cancellation of transaction between the parties. That proceedings under Section 24 of the MRC Act cannot be confused with the Suit filed by Respondent Nos. 3 and 4. That Section 24 proceedings are filed only for recovery of possession whereas the Suit is filed for seeking cancellation of transaction of Agreement for Sale and for protection of title of

Respondent Nos. 3 and 4 in respect of the Flat so as to prevent Petitioner from claiming any rights in respect thereof. That therefore mere filing of the suit does not come in the way of competent authority exercising jurisdiction under Section 24 of the MRC Act. He would pray for dismissal of the Petition.

11) Rival contentions of the parties now fall for my consideration.

12) There is no dispute to the position that Leave and License Agreement came to be executed between the Petitioner and Respondent Nos.3 and 4 on 1 December 2019, which was registered on 3 December 2019. The License was for the period of 22 months from 18 December 2019 to 17 October 2021. The license fees agreed was Rs.33,500/- for the first term of 11 months and Rs.34,500/- for the next term of 11 months. For the purpose of deciding correctness of the impugned orders, it is not necessary to consider the allegations relating to delay in payment of license fees, non-payment of electricity charges or complaints by Society. Undisputedly, the license ended on 17 October 2021 and Petitioner did not vacate the Flat upon expiry of the License on 17 October 2021.

13) Parties agreed to effect sale of the Flat in favour of Petitioner and for that purpose registered Agreement for Sale on 28 October 2021 was executed between Petitioner and Respondent Nos. 3 and 4. The transaction of sale was agreed within 11 days of expiry of licence. Under the Agreement, the Flat was agreed to be sold for total consideration of Rs. 1 crore. It appears that on the date of execution of Agreement for Sale dated 28 October 2021, Petitioner paid an amount of Rs.19,00,000/- to Licensors towards part consideration and paid an amount of Rs.1,00,000/- towards TDS. The balance amount payable under the Agreement was Rs.80,00,000/-. There is no dispute to the position that further amount of Rs.5,00,000/- was paid by Petitioner to Respondent Nos. 3

and 4 on 30 August 2022 thereby leaving balance consideration payable of Rs.75,00,000/-. It is admitted by Licensors in their application that amount of Rs.60,00,000/- was received by them through SBI towards credit facility availed by Petitioner. This is how total consideration admittedly received by Respondent Nos. 3 and 4 from Petitioner is Rs.85,00,000/-. It is the complaint of Respondent Nos. 3 and 4 that balance amount of Rs.15,00,000/- is not paid to them by Petitioner in pursuance of the Agreement for Sale dated 28 October 2021 and that therefore the sale transaction is incomplete and they continue to be owners in respect of the Flat. On the contrary, it is Petitioner's contention that she has become owner in respect of the Flat on account of execution of registered Agreement for Sale dated 28 October 2021.

14) The short issue that arises for consideration in the light of above factual background is whether the Competent Authority could have exercised summary jurisdiction under Section 24 of the MRC Act and passed an order of eviction against Petitioner. Perusal of the impugned order dated 2 November 2023 refusing leave to defend would indicate that specific findings are recorded by the Competent Authority that Petitioner is holding possession of the Flat only on the basis of Leave and License Agreement and not on the basis of Agreement for Sale. The relevant findings by the Competent Authority in paragraph 3 of the order read thus:

3. I have gone through the case and heard both sides. The leave and license agreement is admitted by the respondent. Admittedly, the agreement is expired by the efflux of time. There is no agreement on record showing the extension of leave and license agreement. The execution of agreement for sale does not confer any right in property. It can not be a reason for withholding the possession of application premises. In agreement for sale there is no recital regarding the handing over possession. On the contrary it is written that the permanent possession will be given on execution of sale deed. **Thus the Respondent is holding possession of application premises only on the basis of leave and license agreement and not on the basis of agreement for sale.** Hence on expiry of

leave and license agreement the respondent is bound to vacate application premises. The execution of agreement for sale can not be a reason for withholding application premises. The respondent can file suit for specific performance if the agreement is not registered. Hence it cannot be a triable issue before this authority. Hence, the respondent have no ground to contest this case. Hence, she is not entitled for leave to contest this case. Hence, following order is passed:

ORDER

The application Exh.11 is hereby rejected.

(emphasis added)

15) The jurisdictional fact assumed by the Competent Authority for exercising jurisdiction under Section 24 of the MRC Act is possession of Flat by Petitioner only on the basis of Leave and License Agreement and not on the basis of Agreement for Sale. However, perusal of pleadings by Respondent Nos. 3 and 4 in their application indicates otherwise. In paragraph 14 of their application Licensors pleaded as under:

14. The Applicants state that even after the completion of period mentioned in the Leave and License Agreement dated 1 December 2019 i.e. upto 17 October 2021, **the Respondent and her family have still continued to stay in the abovesaid residential premises due to execution of the Agreement for sale** and her promised to pay double the License fees. The Applicants state that the Applicants did not handover the peaceful and vacant possession to the Respondent due to her offer of the double License fees till the payment of the final consideration amount of the Agreement for Sale dated 28 October 2021 which has not received by the Applicants till date.

(emphasis added)

16) Thus, there was a specific admission by Respondent Nos. 3 and 4 in their application that '*the possession of Petitioner upto 17 October 2021 was in accordance with Leave and License Agreement whereas continuation in the Flat thereafter is due to execution for Agreement for Sale*'. Thus, according to the own admission given by them, after expiry of the license on 17 October 2021

Petitioner is not possessing the Flat in accordance to the Leave and License Agreement but on the strength of Agreement for Sale. Therefore, the very assumption on the part of the Competent Authority for exercise of jurisdiction under Section 24 of the MRC Act is contrary to the pleadings in the application.

17) Once Respondent Nos. 3 and 4 admitted that Petitioner's possession of Flat is attributable to the execution of Agreement of Sale the Competent Authority would lose jurisdiction to entertain application under Section 24 of the MRC Act. The factum of the Petitioner continuing to remain in possession of the Flat on the strength of the Agreement for Sale is further borne out from specific prayer made by Respondent Nos. 3 and 4 in S. C. Suit No.484 of 2023 filed before the City Civil Court in which following prayer is made:

c) That this Hon'ble Court be pleased to declare that the Defendant No.1 and 2 are illegally occupying the said suit premises as a trespasser and therefore they have no right of whatsoever nature to use, occupy and /or remain in possession and therefore **they be ordered and decreed to quit, vacate and hand over quiet, vacant and peaceful possession of the suit premises** i.e. Flat No.1304, 13th Floor, Building No.68, Kurla Sahayog Co-operative Housing Society Limited, Kurla (East), Mumbai-400 024, situate lying and being at Survey No.229 and 267, CTC No.12 (Pt.) Village-Kurla-3, Taluka-Kurla, Mumbai Suburban District within the Limit of 'L' ward of the Municipal Corporation of Greater Mumbai, to the Plaintiffs.

(emphasis and underlining supplied)

18) Thus, jurisdiction of the City Civil Court is invoked by filing S.C. Suit No. 484 of 2023 to seek possession of the Flat. The said prayer flows out of main prayer for seeking cancellation of Agreement for Sale dated 28 October 2021. Thus, in the Suit, there is a direct link between prayer for recovery of possession of the Flat with the prayer for cancellation of Agreement for Sale dated 28 October 2021.

19) Filing of S.C. Suit No.484 of 2023 by Respondent Nos. 3 and 4 would indicate that they were simultaneously prosecuting two remedies in respect of same cause of action. They filed Eviction Application No.224 of 2022 before the Competent Authority in November 2022. Within few months thereafter, they were advised to file S.C. Suit No.484 of 2023 before the City Civil Court. Both proceedings contain prayer for recovery of possession of the Flat. In the light of filing of the Suit before Civil Court seeking cancellation of Agreement for Sale and for recovery of possession of the Flat, availability of jurisdiction under Section 24 of the MRC Act for Licensors becomes questionable. In my view, once a civil suit is filed seeking recovery of possession of premises which were once granted on license and later became subject matter of transaction of sale, there would be ouster of jurisdiction of the competent authority under Section 24 of the MRC Act.

20) In ordinary course, the competent authority does not lose jurisdiction under Section 24 on mere execution of agreement or memorandum of understanding between the licensor and licensee for purchase of the application premises. Very often it is noticed that the Licensee executes an unregistered agreement or MoU and continues to hold possession of the premises even after expiry of license. In every such case, it cannot be said that the jurisdiction of the competent authority under Section 24 is lost. It all depends on facts and circumstances of the case. The normal course of action is for the licensee/purchaser to vacate the possession of licensed premises and adopt the remedy of filing suit for specific performance of the agreement or MoU or for refund of consideration paid. It all depends on facts and circumstances of each case and particularly upon continuation of possession under license or under agreement or MoU. In the present case, Respondent Nos. 3 and 4 themselves have linked possession by Petitioner to the Agreement for Sale both in the pleadings of Eviction Application as well as in the Plaint

filed in S.C. Suit No.484 of 2023. Therefore, in the peculiar facts and circumstances of this case, it cannot be held that possession of the Flat by Petitioner cannot be treated as under the expired license.

21) It is the case of Petitioner that the entire amount of consideration is paid under the registered Agreement for Sale dated 28 October 2021 and that the transaction of sale is complete and title in the flat is vested in her. On the contrary Respondent Nos. 3 and 4 dispute the position of payment of entire amount of consideration. Only Civil Court can decide this dispute about vesting of title in the flat in Petitioner or otherwise. Far from Petitioner filing the suit for specific performance of Agreement for Sale dated 28 October 2021 (since it is her case that transaction of sale is complete and there is nothing to be performed under the Agreement), it is Respondent Nos. 3 and 4 who have filed S.C. Suit No. 484 of 2023 seeking declaration of ownership of the Flat by seeking cancellation of the Agreement and for recovery of possession of the flat.

22) Glaring error committed by the Competent Authority in the present case is to reject the application for leave to defend filed by Petitioner. On that account, defence of acquisition of title in the Flat is not permitted to be raised by Petitioner. In the present case, the impact of execution of Agreement for Sale dated 28 October 2021 on Petitioner's right to continue possession ought to have been considered by the Competent Authority. The Authority however, erroneously, assumed that continuation of possession was linked to Leave and License Agreement and not to the Agreement for Sale. The Competent Authority failed to appreciate that by linking possession with Agreement for Sale, Licensors have raised specific prayer for recovery of possession in the Suit filed before the City Civil Court.

23) Though detailed submissions are canvassed by Mr. Soman about the exact effect of Agreement for Sale dated 28 October 2021 contending that the

same results in vesting of title in favour of Petitioner and divesting title of third and fourth Respondents, in my view considering the limited controversy involved in the Petition, it is not necessary to delve deeper into the said aspect. Whether the Petitioner has paid full amount of consideration to Respondent Nos. 3 and 4 and whether she has become owner in respect of the Flat is something which would be decided by the City Civil Court in S.C. Suit No. 484 of 2023. That controversy need not be decided in the present Petition. All contentions in that regard are accordingly kept open.

24) It is also required to be borne in mind that the claim of Respondent Nos. 3 and 4 is about non-receipt of balance consideration of Rs.15,00,000/-, which shows that they admit receipt of 85% of consideration. The effect of the impugned order of the Competent Authority is that Petitioner is termed as licensee overstaying in the Flat after expiry of license on 17 October 2021 and is made liable to pay monthly compensation of Rs. 69,000/- from 18 October 2021. If the impugned order of the Competent Authority is allowed to stand, the same would amount to Respondent Nos. 3 and 4 unjustly enriching themselves by receiving compensation in the form of double the amount of license fees @ Rs. 69,000/- per month even after payment of 85% of consideration for purchase of the Flat.

25) After considering the overall conspectus of the case, I am of the view that the Competent Authority has committed a jurisdictional error in entertaining and deciding the Eviction Application filed by Licensors in the light of filing of Suit by them seeking cancellation of Agreement for Sale dated 28 October 2021 as well as for recovery of possession of the Flat. Respondent Nos. 3 and 4 cannot be permitted to exercise two remedies simultaneously before two different fora for same cause of action and for same prayer of recovery of possession. Civil Court being more competent to decide the issue

about validity of transaction between the parties, it is appropriate that Respondent Nos. 3 and 4 await the decision of the Civil Suit, in which comprehensive prayers are made not just for cancellation of Agreement for Sale and for recovery of possession, but also for recovery of compensation. Licensors would therefore be at liberty to pursue S.C. Suit No.484 of 2023 even though the eviction order passed by the Competent Authority is being set aside in the present Petition.

26) As observed above, to show her *bonafides*, Petitioner has expressed willingness to pay to Respondent Nos. 3 and 4 alleged balance amount of consideration of Rs. 15,00,000/- without prejudice to her rights and contentions in the pending Suit. The issue of non-payment of entire amount of consideration is strictly not a subject matter of this petition. However, since Petitioner has shown willingness to pay the alleged balance amount of Rs. 15,00,000/-, it is for Respondent Nos. 3 and 4 to consider acceptance of the same without prejudice to their rights and contentions. Mr. Adsul raises strong objection to the offer for payment of balance amount of consideration by mixing eviction proceedings under Section 24 of the MRC Act with the Suit. In ordinary circumstances, Mr. Adsul would have been right in raising the said objection. However, in the present case, the payment /deposit is being offered by Petitioner to show her *bonafides* for passing order in the present Petition where she does not desire to retain possession with the allegation of not paying the balance amount of consideration agreed under the Agreement for Sale. Since the balance amount of Rs.15,00,000/- was to be paid within 60 days from 28 October 2021, it is appropriate that while making payment /deposit of the balance consideration, Petitioner also pays interest @ 8% per annum on the said amount. This arrangement is made purely with a view to balance the equities amongst the parties.

27) Writ Petition accordingly succeeds and I proceed to pass following order:

- (i) Orders dated 2 November 2023 passed by the Competent Authority on Application at Exhibit-11 as well as in Eviction Application No. 224 of 2022 and order dated 26 December 2023 passed by the Revisional Authority are set aside.
- (ii) Respondent Nos. 3 and 4 shall be at liberty to pursue S.C. Suit No. 484 of 2023 filed before the City Civil Court, Mumbai and nothing observed in the present judgment shall influence the learned Judge of the City Civil Court while passing any orders in the said Suit.
- (iii) Respondent Nos.3 and 4 shall also be at liberty to seek necessary interim orders in the said Suit.
- (iv) Without prejudice to her rights and contentions, Petitioner is permitted to offer to Respondent Nos. 3 and 4 amount of Rs. 15,00,000/- alongwith simple interest @ 8% per annum from 1 January 2022 till 31 August 2024 within a period of two weeks from today. Respondent Nos. 3 and 4 shall be at liberty to accept such payment strictly without prejudice to their rights and contentions in the pending Suit.
- (v) In the event Respondent Nos.3 and 4 show disinclination to accept the above payment from Petitioner, Petitioner shall deposit the said amount before the City Civil Court in S.C. Suit No.484 of 2023, which shall then be invested in interest bearing deposits.

28) With the above directions, the Writ Petition is allowed. Rule is made absolute. There shall be no orders as to costs.

[SANDEEP V. MARNE, J.]