

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11256 OF 2024

1.Shabbir Hussain Abdul Rehman Shaikh
and Anr.

...Petitioners

V/s.

1. Addl. Divisional Commisisoner,
Konkan Division and Ors.

...Respondents

Mr. Uzair Kazi *with Algan Memon for the Petitioners.*

Ms Savita Prabhune, *AGP for Respondent -State.*

Mr. Sharid Nachan *for Respondent No.3.*

Mr. Rajas Ashish Naik *for Respondent No.4.*

CORAM : SANDEEP V. MARNE, J.

Dated : 9 August 2024.

P.C. :

1) This Petition is filed challenging order dated 18 December 2023 passed by the Competent Authority, Rent Control Act Court, Konkan Division, Mumbai, allowing Eviction Application No.69 of 2022 filed by Respondent Nos.3 and 4 and directing Petitioners to handover possession of the application premises to Respondent Nos.3 and 4 with further direction to pay damages @ Rs.1,80,000/- per month from 5 August 2022 till handover of possession of the premises. Order dated 18 December 2023 has been unsuccessfully tested in the revision before Additional Divisional

Commissioner, Konkan Division, who has proceeded to dismiss the Revision Application by order dated 26 June 2024.

2) I have heard Mr. Kazi, the learned counsel appearing for the Petitioners, Mr. Nachan, the learned counsel appearing for Respondent No.3, Mr. Naik, the learned counsel appearing for Respondent No.4 and Ms Prabhune, the learned AGP for Respondent -State.

3) There is no dispute to the position about entry of Petitioners into application premises is through license granted by Respondent Nos.3 and 4. There is also no dispute to the position that license has expired on 4 August 2022. The Petitioners have however raised two defences for not vacating the application premises despite expiry of license on 4 August 2022. Firstly, they contend that on account of initiation of action against Respondent Nos.3 and 4 by the Customs Authorities, they had borrowed sum of Rs.5,00,000/- from Petitioners and that it was orally agreed that till return of the said amount, Petitioners shall continue to remain in possession of the application premises. Secondly, Petitioners have also raised the defence that tenancy is created in their favour by Respondent Nos.3 and 4 in respect of the application premises by issuance of rent receipt and accordingly Suit has been filed before the Court of Small Causes for declaring the Petitioners to be tenants.

4) In my view both the defences sought to be raised by Petitioners are not even worthy of consideration while deciding summary proceedings under the provisions of Section 24 of the Maharashtra Rent Control Act, 1999 (**MRC Act**), under which Competent Authority is vested with jurisdiction to pass an order of eviction upon expiry of the leave and license

agreement. Merely because some amount is allegedly due from Respondent Nos.3 and 4 to Petitioners, the same cannot be a reason for holding on to the possession of the licensed premises. If indeed any amount is due and payable by Respondent Nos.3 and 4 to Petitioners, Petitioners can always file a Suit for recovery of the said amount. So far as the declaratory Suit filed by Petitioners for seeking a declaration of tenancy in respect of the suit premises is concerned, it is pointed out by the learned counsel appearing for Respondent Nos.3 and 4 that the said Suit is in fact dismissed for non-prosecution. The learned counsel for the Petitioners would urge that an application has been filed for recall of the order dismissing the Suit for non-prosecution. Be that as it may. Filing of such Suit is again not the reason for the Competent Authority not to exercise jurisdiction under Section 24 of the MRC Act. I therefore, do not find any patent error in the orders passed by the Competent Authority and the Revisional Authority.

5) In fact, the conduct of the Petitioners in the entire episode clearly appears to be blameworthy. For the act of illegally holding on to the possession of the application premises, which is a residential flat admeasuring 92.17 sq.meters at Khar (West), Mumbai, for recovery of alleged debt of only Rs.5,00,000/-, an FIR came to be lodged against Petitioner No.1 alleging forgery in the matter of rent receipt. For securing an order of bail from the learned Magistrate, Petitioner No.1 signed a possession letter recording that he has handed over possession of the application premises to Respondent No.3. By misrepresenting the learned Magistrate that possession of the flat had already been handed over to Respondent No.3, Petitioner No.1 had secured bail. In fact, Petitioners still continue to be in possession of the Flat. In my view therefore, while

dismissing the Petition, this conduct of the Petitioners cannot be ignored and exemplary costs are required to be imposed on them.

6) Writ Petition is accordingly **dismissed** with costs of Rs.25,000/- to be paid by the Petitioners to the Maharashtra State Legal Services Authority within a period of two weeks.

[SANDEEP V. MARNE, J.]