

Arjun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

ARJUN  
VITTHAL  
KUDHEKAR

WRIT PETITION NO.749 OF 2025

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Rohidas Dnyandev Satpute & Anr.

...Petitioners

Versus

Anjali Anand Khare & Ors.

...Respondents

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Mr. Harshad Sathe a/w Mr. Saurabh Butala, for the Petitioners.

None for the Respondents.

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CORAM: MADHAV J. JAMDAR, J.  
DATED: 10 FEBRUARY 2025

P.C.:

1. Heard Mr. Sathe, learned Counsel for the Petitioners.

2. This Court passed following Order on 20th January 2025 :-

*“1. Heard Mr. Butala, learned Counsel for the Petitioners.*

*2. Issue notice to the Respondents, returnable on 10th February 2025.*

*3. In addition to Court notice, the Petitioners to serve the Respondents by private service and shall file affidavit of service before the returnable date.*

*4. Parties are put to notice that, subject to the convenience of the Court, the Writ Petition will be heard finally at the stage of admission.*

*5. Stand over to 10th February 2025 at 2:30 p.m..”*

3. Thus, parties are put to notice that subject to the convenience of the Court, the Writ Petition will be heard finally at the stage of

admission. Mr. Sathe, learned Counsel for the Petitioners states that the Respondents have been served and tenders Affidavit of Service. Inspite of service, none appears for the Respondents.

4. By the present Writ Petition filed under Article 227 of the Constitution of India, the challenge is to the legality and validity of the Order dated 9th December 2024 passed by the Additional Divisional Commissioner, Pune Division, Pune in Revision Application No.677 of 2024 (“**impugned Order**”). By the Order dated 22nd August 2024 passed by the Competent Authority, Rent Control Act Court, Pune Division, Pune, application bearing Exhibit – 55 in E. A. No.05 of 2019 filed by the Respondent No.1 i.e. Third Party Objector under Section 47(2) r/w Order XXI Rule 35 and Rule 97 of the *Code of Civil Procedure, 1908* has been dismissed. The said Order is challenged by filing Revision Application No.677 of 2024 before the Additional Divisional Commissioner and by the impugned Order dated 9th December 2024, the eviction Order has been stayed.

5. Mr. Sathe, learned Counsel for the Petitioners tenders synopsis giving various dates. The same reads as under :-

| <i><b>DATE</b></i> | <i><b>PARTICULARS</b></i>                                                                                                                                                           |
|--------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 29.07.2015         | <i>Petitioners purchase suit property from the Respondent Nos. 2 &amp; 3 by executing Registered Sale Deed No. 5679 of 2015 and paying consideration amount of Rs. 18,00,000/-.</i> |
| 29.07.2015         | <i>Petitioners execute Registered Leave and License Agreement No. 5680 of 2015 for 11 months with the Respondent Nos. 2 &amp; 3 upon the request of the Respondent</i>              |

|                                |                                                                                                                                                                                                                                                                                                                                                        |
|--------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                | <i>Nos. 2 &amp; 3 for continuing to reside in the subject property on leave and license basis</i>                                                                                                                                                                                                                                                      |
| <i>August – September 2015</i> | <i>The Respondent Nos. 2 &amp; 3 do not pay rent and breach the terms of the Leave and License Agreement</i>                                                                                                                                                                                                                                           |
| <i>19.09.2015</i>              | <i>Petitioners filed Application No. 67 of 2016 before the Ld. Competent Authority, Pune, u/s. 24 of the Maharashtra Rent Control Act, 1999, seeking eviction of the Respondents from the Suit Property.</i>                                                                                                                                           |
| <i>2018</i>                    | <i>Respondent Nos. 2 &amp; 3 file Spl. C.S. No. 74 of 2018 seeking cancellation of Registered Sale Deed No. 5679 of 2015 dated 29.07.2015 and also prefer an application for temporary injunction</i>                                                                                                                                                  |
| <i>18.04.2019</i>              | <i>Ld. Competent Authority, Rent Control Act, Pune, allowed application preferred by the Petitioners and directed the Respondent Nos. 2 &amp; 3 to handover the peaceful possession of the suit flat and also ordered the Respondent Nos. 2 &amp; 3 to pay damages as the double rate of license fee from 29.06.2016 till handing over possession.</i> |
| <i>10.10.2019</i>              | <i>Ld. Civil Judge Senior Division was pleased to reject application preferred by the Respondent Nos. 2 and 3 seeking temporary injunction.</i>                                                                                                                                                                                                        |
| <i>2019</i>                    | <i>Petitioners file Execution Application No. 05 of 2019 for execution of eviction order dated 18.04.2019</i>                                                                                                                                                                                                                                          |
|                                | <i>Respondent Nos. 2 &amp; 3 prefer Revision Application No. 152 of 2019 before the Court of Ld. Additional Divisional Commissioner, Pune.</i>                                                                                                                                                                                                         |
| <i>20.06.2019</i>              | <i>Respondent Nos. 2 &amp; 3's Application for Stay of order dated 18.04.2019 was partly allowed subject to the Respondent Nos. 2 &amp; 3 depositing the amount of damages as ordered in order dated 18.04.2019. However, the Respondent Nos. 2 &amp; 3 do not comply with the same.</i>                                                               |
| <i>27.08.2021</i>              | <i>Ld. Additional Divisional Commissioner, Pune, dismissed Revision Application No. 152 of 2019 preferred by the R2 &amp; R3.</i>                                                                                                                                                                                                                      |
|                                | <i>Hence the Respondent nos. 2 and 3 approached this Hon'ble Court and file WP No. 4456 of 2022</i>                                                                                                                                                                                                                                                    |
| <i>13.04.2022</i>              | <i>This Hon'ble Court granted interim relief to the Respondent no. 2 and 3 subject to depositing decretal amount.</i>                                                                                                                                                                                                                                  |
| <i>01.09.2023</i>              | <i>Writ Petition No. 4456 of 2022 was dismissed by this Hon'ble Court.</i>                                                                                                                                                                                                                                                                             |

|                               |                                                                                                                                                                                                                                                                                                                                                         |
|-------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 15.12.2023                    | <i>Ld. Competent Authority, Pune, issued possession warrant in respect of the suit property.</i>                                                                                                                                                                                                                                                        |
| 20.02.2024                    | <i>Madhavi Joshi, Sister of Respondent no. 2 preferred Third Party Objection bearing Exh. 38 in Execution Application No. 05/2019 and objected to execution of the order passed by the Ld. Competent Authority.</i>                                                                                                                                     |
| 05.04.2024                    | <i>The Respondent nos. 2 and 3 also preferred SLP No. 8223 of 2024 in Hon'ble Apex Court challenging order dated 01.09.2023, which was dismissed.</i>                                                                                                                                                                                                   |
| 22.04.2024                    | <i>Ld. Competent Authority, Rent Control Act Court, Pune rejects Third Party Objection Application preferred by Madhavi Joshi. (Exh. 38 in E. A. No.05 of 2019)</i>                                                                                                                                                                                     |
| 25.06.2024                    | <i>Respondent No. 1 (Daughter of Respondent no. 2) preferred Third Party Objection Application bearing Exh. 47 in Execution Application No. 05/2019 raising objection to execution of order passed by the Ld. Competent Authority.</i>                                                                                                                  |
| 29.07.2024                    | <i>Ld. Competent Authority, Pune, rejects Third Party Objection Application preferred by the Respondent No. 1. (Exh. 47 in E. A. No.05 of 2019)</i>                                                                                                                                                                                                     |
|                               | <i>Respondent No. 1 filed Revision Application No. 677 of 2024 before the Ld. Addl. Divisional Commissioner, Pune Division, challenging order dated 29.07.2024 and 18.04.2019. Respondent No. 1 also preferred application seeking Stay to the proceeding of Execution Application No. 05/2019 till the final disposal of the Revision Application.</i> |
| 27.11.2024<br>&<br>04.12.2024 | <i>Petitioners filed their detailed say and written notes of arguments</i>                                                                                                                                                                                                                                                                              |
| 19.11.2024                    | <i>Respondent no. 2 and 3 preferred Review Petition in SLP No. 8223 of 2024 and the same is dismissed by the Hon'ble Apex Court</i>                                                                                                                                                                                                                     |
| 09.12.2024                    | <i>Ld. Addl. Divisional Commissioner, Pune Division, passed an order of 'status-quo' to be maintained till the next date i.e. 03/03/2025 and thus stayed the execution proceeding pending before the Ld. Competent Authority, Rent Control Act, Pune.</i>                                                                                               |
|                               | <i>Being aggrieved by the interim order passed by the Ld. Addl. Divisional Commissioner, Pune Division, the Petitioner has approached this Hon'ble Court by filing present petition.</i>                                                                                                                                                                |

6. Above factual position clearly shows that, to ensure that the eviction Order is not executed, Third Parties are raising objection to the execution of the eviction Order. Earlier sister of the Respondent No.2 i.e. Judgment Debtor has raised the objection and after rejection of the same, now daughter of the Respondent No.2 has objected the execution of the Order.

7. As far as the jurisdiction of the Competent Authority under Section 24 of the *Maharashtra Rent Control Act, 1999* (“**Rent Act**”) is concerned, it is settled legal position that, leave and license agreement is a conclusive piece of evidence and no evidence which is contrary to the leave and license agreement can be led and considered.

8. The Competent Authority, Rent Control Act Court, Pune Division, Pune by Order dated 29th July 2024 rejected said Exhibit – 47 application filed by the Respondent No.1 by observing in Paragraph No.8 as follows :-

*“8. The Competent Authority is having limited power to decide the right of licensor upon expiry of period of license. The proceedings under section 43 is a summary proceedings. It can not be decided full-fledged title on the basis of the leave and license agreement. If the objector is having right in suit premises and whether the alleged sale deed dated 29/07/2015 is void ab-initio, she can file civil Suit for declaration in that respect. The competent authority constituted under the Act and for the purposes of the provisions contained in Chapter VIII of the Act is merely and at best a statutory authority created for a definite purpose and to exercise, no doubt, powers in a quasi-judicial manner provided therefore and subject to such conditions and limitations stipulated by the very provision*

*of law under which the Competent Authority itself has been created. Clause (a) of sub-section (4) of Section 43 mandates that the tenant or licensee on whom the summons is duly served should contest the prayer for eviction by filing, within thirty days of service of summons on him, an affidavit stating the grounds on which he seeks to contest the application for eviction and obtain the leave of the Competent Authority to contest the application for eviction as provided therefore. The legislature further proceeds to also provide statutorily the consequences as well laying down that in default of his appearance pursuant to summons or obtaining such leave, by filing an application for the purpose within the stipulated period, the statement made by landlord in the application for eviction shall be deemed to be admitted by the tenant or licensee, as the case may be, and the appellant shall be entitled to an order for eviction on the ground so stated by him in his application for eviction.”*

9. Thus, what has been *inter alia* held by the Competent Authority is that the contentions raised by the present Respondent No.1 are concerning the execution of sale deed dated 29th July 2015 which are outside the scope of the enquiry as per Section 24 of the Rent Act.

10. It is the contention of the Respondent No.1 that her signature is not taken on the sale-deed dated 29th July 2015 and therefore as far as her share in the suit premises is concerned, she has not given her consent. It is her submission that the leave and license agreement is executed without her consent. In view of Section 24 of the Rent Act and particularly Explanation (b) to Section 24 specifies that an agreement of license in writing shall be conclusive evidence of the facts stated therein, does not permit the Competent Authority to look into any

evidence which is contrary to the leave and license agreement. In fact, this is a case where, the Competent Authority has passed Order dated 18th April 2019 against the Respondent Nos.2 and 3 who are the original licensees. Said Order dated 18th April 2019 has been confirmed by the Additional Commissioner, Pune Division, Pune by Order dated 27th August 2021. The said Order dated 27th August 2021 is thereafter confirmed by this Court by Order dated 1st September 2023 which has been confirmed by the Supreme Court by Order dated 5th April 2024. The Respondent Nos.2 and 3 filed Review of said Order of the Supreme Court which has been dismissed on 19th November 2024. In the meanwhile, sister of the Respondent No.2 has objected to the execution of the Order and after rejection of the same, the Respondent No.1 who is the daughter of the Respondent No.2, has filed Application being objector bearing Exhibit – 47 in E. A. No.05 of 2019. Thus, it is clear that filing of said Application itself is an abuse of the process of law.

**11.** In any case, in view of specific Explanation to Section 24, no other evidence can be seen which is contrary to the contents of the leave and license agreement. Therefore, the Order of the Additional Divisional Commissioner granting stay by the impugned Order dated 9th December 2024 is not in accordance with law. Accordingly, the impugned Order dated 9th December 2024 passed by the Additional Division Commissioner, Pune Division, Pune in Revision Application

No.677 of 2024 is quashed and set aside.

**12.** The Writ Petition is allowed in above terms with no order as to costs.

**[MADHAV J. JAMDAR, J.]**