

Arjun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9131 OF 2025

Ram *alias* Ramesh Shivram Kripalani ...Petitioners
Since deceased by LRs
(A) Sangeeta Ram Kripalani & Ors.

Versus

Surekha *alias* Rekha Sharad Muttha & Anr. ...Respondents

Mr. M. R. Barve i/b Nikhil Ghate, for the Petitioners.

Ms. Yojana Gandhi, for Respondent No.1.

CORAM: MADHAV J. JAMDAR, J.

DATED: 12 NOVEMBER 2025

P.C.:

1. Heard Mr. Barve, learned Counsel appearing for the Petitioners and Ms. Gandhi, learned Counsel appearing for Respondent No.1.
2. The challenge in this Writ Petition filed under Article 227 of the Constitution of India is to the Interim Order dated 23rd April 2025 passed by the Additional Division Commissioner, Pune Division, Pune in Revision No.163 of 2025 (“**impugned Order**”).
3. By the impugned Order, the learned Additional Divisional Commissioner, Pune Division, Pune refused to grant stay to the Order dated 20th March 2025 passed by the Competent Authority, Rent Control Act Court, Pune Division, Pune in Application No.25 of 2011.

The operative part of the said Order dated 20th March 2025 reads as under :-

“ORDER

1. *The application is allowed.*
2. *The respondents are hereby directed to handover vacant and peaceful possession of licensed premises “Bungalow No. C-3, admeasuring total area of 4000 Sq. Ft. (Built up area of 3100 Sq. Ft. + Garden of 900 Sq. Ft.) Merigold Premises Phase-1 Co-operative Housing Society, Survey No. 15, Kalyani Nagar, Vadgaon Sheri, Pune -14 within four boundaries: East-Bungalow/ Unit No. C-4, West-Bungalow / Unit No. C-2 of Saralabai Bora, South- Society Garden, and Jogging track, North- Road and Artificial lake” within 30 days from the date of this order to applicant.*
3. *The respondents are directed to pay damages to applicant at the rate of Rs.48,000/- Per month (24,000 x 2 = 48,000/-) from 27/06/2011 to till handover the vacant possession of licensed premises.”*
4. The Supreme Court in the decision of ***Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd.***¹, has held that as far as the decree is passed under the provisions of the Rent Act while granting stay by the Appellate Court, condition be imposed by which the market rate be directed to be deposited in the Court by the tenant. In this case, admittedly the Petitioner is licensee and thus the Petitioner is not protected under the relevant Rent Act i.e. Maharashtra Rent Control Act, 1999. The Competent Authority has directed payment of Rs.48,000/- per month. It is also required to be noted that the licensed

¹ (2005) 1 SCC 705

premises is a Bungalow consisting of 4000 sq. ft. area, situated at Kalyani Nagar, Vadgaon Sheri, Pune - 14, which is a prime residential locality.

5. It is the contention of Mr. Barve, learned Counsel for the Petitioners that there is an Agreement of Sale executed between the parties. The said Agreement is dated 24th October 2005. Learned Counsel has relied on Section 53-A of the *Transfer of Property Act, 1882*. The said Section 53-A reads as under :-

“53-A. Part performance.—Where any person contracts to transfer for consideration any immoveable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty, and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract, and the transferee has performed or is willing to perform his part of the contract, then, notwithstanding that where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract:

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.”

6. Thus, it is required to be noted that by 2001 Amendment the following words were deleted from Section 53-A :-

“the contract, though required to be registered, has not been registered, or,”

7. In this case, admittedly, Agreement to Sale dated 24th October 2005 is not a registered document. Thus, the Petitioner cannot claim protection under Section 53-A of the Transfer of Property Act, 1882.

8. In any case, there is ample power under Section 44 of the *Maharashtra Rent Control Act, 1999* (“**Rent Act**”) read with Order 41 Rule 5 of the *Code Of Civil Procedure, 1908* to grant stay by imposing suitable conditions.

9. The direction to pay damages to the Applicant at the rate of Rs.48,000/- per month from 27th June 2011 till handing over the vacant possession of the licensed premises is passed by the Competent Authority by exercising power under Sub-Section (2) of Section 24 of the Rent Act.

10. Thus, in the interest of justice and to balance equities, it is necessary to pass Order that although the eviction Order can be stayed, the Petitioners shall be directed to deposit an amount of Rs.48,000/- per month as directed by the Competent Authority. However, Mr. Barve, learned Counsel for the Petitioners, states that the Petitioners are not ready to deposit such amount.

11. Mr. Barve, learned Counsel for the Petitioners has relied on the decision of the Supreme Court in *R. Kanthimathi And Anr. v. Beatrice*

*Xavier (Mrs.)*² and submitted that in view of the Agreement of Sale between lessor and lessee, relationship of landlord and tenant ceases to exist once said agreement is entered into. However, as noted herein above, the said Agreement is not a registered document and therefore no right, title and interest is created by such Agreement and even benefit of Section 53-A of the Transfer of Property Act, 1882 cannot be claimed.

12. This is a Writ Petition filed under Article 227 of the Constitution of India, which is an extraordinary jurisdiction. In view of the stand taken by the Petitioners that the Petitioners will not pay any amount for occupying bungalow premises admeasuring 4000 sq. ft. area of which admittedly the Respondent No.1 is the owner, no interference in the impugned Order is warranted.

13. Accordingly, the Writ Petition is dismissed, however, with no order as to costs.

[MADHAV J. JAMDAR, J.]

² AIR 2003 SC 4149