



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

WRIT PETITION NO.2682 OF 2009

Surendra B. Agarwal & Anr. .. Petitioners

versus

AML Merchandising Pvt Ltd. .. Respondent

**Mr.D.Madan, Sr.Counsel alongwith Mr.Farhan Dubash i/by
M/s.Dastur Dadhich & Kalambi for the petitioners.**

Mr.Karim Vakil alongwith Mr.Sanjay Chaturvedi for the respondent.

**CORAM : A.S.OKA, J.
DATE : 11th September 2009.**

ORAL JUDGMENT:

. By this writ petition under Article 227 of the Constitution of India the petitioners have taken an exception to the judgment and order dated 17th January 2009 passed by the learned Additional Commissioner, Konkan Division. The petition arises out of proceedings of application under section 24 of the Maharashtra Rent Control Act, 1999 (hereinafter referred to as the said Act).

2. With a view to appreciate the submissions made by the learned counsel appearing for the parties, it will be necessary to briefly refer to the facts of the case. The petitioners herein are applicants in an

application filed under section 24 of the said Act and the respondent company in this petition is the respondent in the said application. The petitioners have described the suit premises subject matter of dispute in paragraph 3 of the application. It is stated that one Mrs.Najoo Behram Bhiwandiwala was the original owner of the larger property in which the suit premises are situated. The petitioners claim that by Deed of Conveyance dated 13th December 2007 they have acquired a larger property from the said Mrs.Najoo Bhiwandiwala. The case of the petitioners is that under an earlier Agreement dated 28th February 2002 executed by the said Mrs.Najoo, M/s.Dream Trading Company Pvt Ltd was inducted as a licensee in the suit premises. The said predecessor of the petitioners by Agreement dated 21st March 2003 inducted the respondent as a licensee. Reliance has been placed on Leave and Licence Agreement dated 21st March 2003. It is contended that the respondent had agreed to pay a sum of Rs.1,00,000/- as monthly compensation. Reliance is placed on supplemental Agreement, dated 8th September 2004 executed by and between the said Mrs.Najoo Bhiwandiwala and the respondent. It is stated that under the said supplemental Agreement the respondent was permitted to carry out certain works of additions or alterations subject to the terms and conditions incorporated in the said Agreement. It is alleged that the original owner Mrs.Najoo

Bhiwandiwala had filed an application for eviction under section 24 of the said Act before the Competent Authority against the respondent. The respondent has filed a suit for declaration and injunction in which the respondent has claimed that he has right to occupy the suit premises as a licensee upto 27th February 2008.

3. In the present application filed by the petitioners under section 24 of the said Act it was contended that the licence expired with efflux of time on 27th February 2008. It is alleged in the application that the respondent had paid compensation up to 27th May 2006 to the predecessor of the petitioners. Various reliefs were claimed in the application, such as, recovery of possession, a direction to pay undisputed amount of compensation and direction to pay double the amount of agreed compensation with effect from 28th May 2007. It must be noted here that an application for intervention was made in the said application by a third party Mr.Nirav Modi. It is the case made out in the said application that the predecessor of the petitioners had executed a declaration under which an option was given to the said Mr.Modi to purchase the suit premises for consideration mentioned therein. It is stated that reference to the said declaration has been incorporated in the Agreement dated 21st March 2003 executed by the petitioner's predecessor in favour of the

respondent. A suit filed by said Mr.Modi on the original side of this Court is pending. The suit is for specific performance of the alleged Agreement for Sale. The application for intervention made by the said third party came to be rejected by the Competent Authority. The said order was challenged by the said Mr.Modi. However, it is not necessary to go into those details as the controversy relating to rights of the said Mr.Modi may not be subject matter of this petition.

4. The respondent filed an application for seeking leave to defend the said application filed by the petitioners. The said application was contested by the petitioners by filing a reply. On 14th July 2008, the Competent Authority rejected the application for leave to defend filed by the respondent. On the same day, the main application under section 24 of the said Act was finally decided by the Competent Authority directing the respondent to handover vacant and peaceful possession of the suit premises to the petitioners. The directions were also issued for payment of compensation at the agreed rate up to 27th February 2008 and to pay the compensation at the rate of Rs. 2,00,000/- per month with effect from 28th February 2008. A direction was also given to the petitioners to return the security deposit after deducting arrears of compensation. The respondent preferred a revision application under section 44 of the said Act. By the impugned

judgment and order dated 17th January 2009, the order of eviction passed by the Competent Authority was quashed and set aside. The Additional Commissioner who was the Revisional Authority directed the Competent Authority not to proceed with the application till the civil suits, namely, the suit for declaration and injunction filed by the respondent and suit for specific performance filed by the said Mr.Modi are finally decided.

5. The learned counsel appearing for the parties have made elaborate submissions. The learned senior counsel appearing for the petitioners after inviting the attention of the Court to the scheme of the said Act pointed out that there was no occasion for the Revisional Authority to set aside the order of eviction. He submitted that there is no dispute that the entry of the respondent in the suit premises is as a licensee under the Agreement executed by the predecessor of the petitioners. He submitted that the petitioners have taken the property under registered Sale Deed and what is claimed by the said Mr.Modi is only an Agreement for Sale. He submitted that there is absolutely no defence available to the respondent to contest the application and by a reasoned order the Competent Authority has rejected the prayer for grant of leave to defend. He submitted that once the execution of Leave and Licence Agreement was established, the respondent had

no defence. He submitted that the Competent Authority could not have stayed the proceedings under section 24 of the said Act only on the ground that a suit for declaration filed by the respondent-licensee was pending. He submitted that as the Competent Authority had no jurisdiction to stay the proceedings of application under section 24 of the said Act the Revisional Authority could not have staged the proceedings. He placed reliance on a decision of this Court in the case of Mr.Rajendra B. Nair Vs. Suresh D. Dyanmothe & Anr (AIR 2002 Bombay 382). He submitted that though the decision deals with a similar provision, namely, section 13-A2 under the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947, the ratio of the decision is squarely applicable to the present case. He submitted that the revision application ought to have been dismissed.

6. The learned counsel appearing for the respondent submitted that the Competent Authority has committed an error by not granting leave to defend. He submitted that there were number of valid and plausible defences raised by the petitioner including a defence that as the respondent was permitted to carry out work of permanent nature, the licence has become irrevocable. He submitted that this was a fit case where leave to defend ought to have been granted in favour of the respondent. He pointed out that in a suit for declaration

and injunction filed by the respondent, injunction was granted against the predecessor of the petitioners which has been confirmed by the Appellate Court. He submitted that even the Agreements of Leave and Licence on which reliance is placed by the petitioners refers to the rights created in favour of the said Mr.Modi whose suit for specific performance is pending before this Court. He submitted that considering the nature of pending suits, the learned Additional Commissioner has committed no error and he rightly directed the Competent Authority to stay its hands till the suits are finally decided. He placed reliance on the decisions of the Apex Court:

- (1)(2000) 5 SCC 708:- Llaq Ahmed Vs. Habeeb-U-Rehman
- (2)(2001) 1 SCC 706 :-Inderjeet Kaur Vs. Nirpal Singh
- (3)AIR 2001 SC 2176:- Manoj Kumar Vs. Bhiarilal
- (4)AIR 1982 SC 1518:-Precision Vs. Prem Deva

He submitted that no interference is called for.

7. I have given careful consideration to the submissions. Section 24 of the said Act forms part of Chapter V of the said Act. The chapter V deals with “special provisions for recovery of possession in certain cases”. The section 24 reads thus:

“24. (1) Notwithstanding anything contained in this Act, a licensee, in possession or occupation of premises given to him on licence for residence shall deliver premises of such

premises to the landlord on expiry of the period of licence; and on the failure of the licensee to so deliver the possession of the licensed premises, a landlord shall be entitled to recover possession of such premises from a licensee, on the expiry of the period of licence, by making an application to the Competent Authority, and the Competent Authority, on being satisfied that the period of licence has expired, shall pass an order of eviction of a licensee.

(2) Any licensee who does not deliver possession of the premises to the landlord on expiry of the period of licence and continues to be in possession of the licensed premises till he is dispossessed by the Competent Authority shall be liable to pay damages at double the rate of the licence fee or charge of the premises fixed under the agreement of licence.

(3) The Competent Authority shall not entertain any claim of whatever nature from any other person who is not a licensee according to the agreement of licence.

Explanation.- For the purposes of this section,-

(a) the expression "landlord" includes a successor-in-interest who becomes the landlord of the premises as a result of death of such landlord; but does not include a tenant or a sub-tenant who has given premises on licence;

(b) an agreement of licence in writing shall be conclusive evidence of the fact stated therein."

8. Under sub-section 3 it is provided that a Competent Authority shall not entertain any claim of whatever nature from any other person who is not a licensee according to the Agreement of Licence.

Clause (b) of explanation to sub-section 3 of section 24 of the said Act provides that an Agreement of Licence in writing shall be conclusive evidence of the facts stated therein. Thus, from section 24

of the said Act it appears that a proceeding under section 24 of the said Act is between a landlord (or licensor) and a licensee. The Competent Authority is conferred with a limited jurisdiction under sub-section 1 of section 24 of the said Act and while exercising that limited jurisdiction the Competent Authority cannot entertain a claim of any third party who is not a licensee according to the Agreement of Licence. Moreover, Agreement of Licence in writing has been made a conclusive evidence of the facts stated therein.

9. At this juncture, it will be also necessary to consider the procedural provisions of the said Act which lay down the procedure for deciding applications under section 24 of the said Act. The said provisions are found in Chapter VIII of the said Act. The title of Chapter VIII is "Summary Disposal of Certain Applications". The section 39 gives provisions of the said Chapter or Rules made thereunder an overriding effect and provides that the provisions of the said Chapter and Rules made thereunder shall have effect notwithstanding anything inconsistent therewith contained elsewhere in the Act or in any other law for the time being in force. The section 43 enacts a special procedure for disposal of the applications. The sub-section 4 of section 43 provides that a tenant or licensee to whom summons is duly served shall not contest the prayer for

eviction from the premises, unless within 30 days of service of summons on him, he files an affidavit stating grounds on which he seeks to contest the application for eviction and obtains a leave from the Competent Authority. The said provision has been held to be mandatory by the Apex Court and there is no provision for extension of time of 30 days provided in the said provision. What is material is clause (c) of sub-section 4 of section 43 which provides that once leave is granted, the Competent Authority has to proceed with the hearing on day to day basis and decide the application as far as possible within six months. There is no provision for preferring an appeal against the order passed by Competent Authority. The only remedy provided in the Statute is of filing a revision application against the order of Competent Authority. Section 47 enacts “bar of jurisdiction”. Section 47 reads thus:

“47. Bar of jurisdiction.- Save as otherwise expressly provided in this Act, no civil court shall have jurisdiction in respect of any matter which the Competent Authority or the State Government or an officer authorised by it is empowered by or under this Act, to decide, and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power so conferred on the Competent Authority or the State Government or such officer”.

10. Thus, the special provision has been made under the said Act

for evicting the licensees of premises given on licence for residence. A special procedure laid down under Chapter VIII governs the application made under section 24 of the said Act. The said Act contemplates a summary disposal of the applications. By the very nature of the proceedings as reflected from the aforesaid statutory provisions, the jurisdiction of Competent Authority is very limited. It can decide a dispute between a landlord (lincesor) and the licensee. It is obvious that considering the summary nature of the proceedings, issue of title to the disputed premises can never be decided in such proceedings. The sub-section 1 of section 24 starts with non-obstante clause. Moreover section 39 of the said Act gives overriding effect to the provisions of Chapter VIII. Therefore, pendency of a suit governed by section 33 of the said Act or a suit on title cannot prevent the competent authority from deciding an application for eviction. There is no statutory power vesting the Competent Authority to stay the proceedings of the application under section 24 of the said Act on the ground of pendency of a civil suit relating to the property.

11. All that is required to be considered by the Competent Authority is whether the landlord has given the premises on licence for residence and whether on expiry of period of licence the licensee has not delivered the possession of the premises subject matter of

licence. Sub-section 3 of section 24 of the said Act specifically prevents the Competent Authority from considering a claim of any stranger. The intention of legislature of making an Agreement of Licence in writing as a conclusive evidence of the facts stated therein cannot be altogether ignored.

12. Hence, once application under section 24 of the said Act is filed by the licensor, the Competent Authority has to decide the said application in accordance with law. The Competent Authority is not really concerned with the title of the licensor. All that is required to be examined is whether the applicant is a licensor and whether the opponent is the licensee and whether there was a Leave and Licence Agreement for residential use of the suit premises. In a case where licensee is claiming some other rights in relation to the premises in dispute, adjudication of the said rights cannot be made by the Competent Authority. Therefore, if a suit relating to the title of the licensor is pending or if a suit for declaration filed by the licensee claiming declaration of rights is pending, that is no ground to detain the hearing of application under section 24 of the said Act. The pendency of suits in the Civil Court or other Competent Court relating to the premises in dispute does not affect the jurisdiction of the Competent Authority to decide the application. While deciding the

application under section 24 of the said Act the Competent Authority cannot decide the issue of title.

13. In the case of Rajendra B. Nair (supra), this Court was dealing with an identical provision viz; section 13A-2 of the Bombay Rents, Hotel & Lodging House Rates (Control) Act, 1947. This Court considered the effect of pendency of a declaratory suit filed by the licensee claiming a declaration of tenancy. Paragraph 12 of the said decision reads thus:

“. The pendency of the declaratory suit which has been filed by the respondent before the Small Causes Court cannot detract from the legal position which ensues under S.13-A2 or affect the jurisdiction, statutorily conferred upon the competent authority of ordering the eviction of a licensee whose entitlement to occupy the premises has come to an end upon the expiry of the licence. The provisions of S.13-A2 have effect, notwithstanding anything contained in the Rent Act. A licensee cannot claim an immunity from the obligation cast upon him by S.13-A2 to vacate the premises upon the expiry of the licence by the institution of a Declaratory Suit in the Small Causes Court. Nor can he claim an immunity from the jurisdiction of the competent authority to order him to vacate when he fails to do so upon the expiry of the licence. Section 13-A2 frowns upon such subterfuge and it is the plain duty and obligation of the Court to give effect to the legislative mandate.”(Emphasis added)

What is held by this Court squarely applies to proceedings under

section 24 of the said Act. Therefore, the revisional Authority has committed a gross error by directing that the Competent Authority cannot proceed with application under section 24 of the said Act merely because a declaratory suit filed by the respondent is pending and merely because the suit for specific performance filed by a third party is pending. If the third party who has filed a suit for specific performance succeeds, it is obvious that on the basis of the said decree the third party can take appropriate steps.

14. The next question which requires to be decided is whether there was any justification on the part of the learned Additional Commissioner for setting aside the order passed by the Competent Authority and for remitting the matter to the Competent Authority. The revision application was directed against the order of the Competent Authority of passing order of eviction and of rejecting the application for grant of leave to defend. The learned Additional Commissioner who was exercising revisional jurisdiction was required to decide the revision application in accordance with law. It will be necessary to peruse the impugned order passed by the Revisional Authority. Firstly, Additional Commissioner has dealt with the question whether the petitioners were landlords. The second question which is addressed to by the learned Additional Commissioner is whether the

said Mr.Modi was a necessary party in the application. The Additional Commissioner holds that the conclusion drawn by the Competent Authority that Mr.Modi is a separate entity and he has nothing to do with Leave and Licence Agreement is definitely wrong. Thereafter, the learned Additional Commissioner has referred to the declaration on the basis of said Mr.Modi has filed a suit for specific performance. The learned Additional Commissioner has thereafter observed as under:

“..... I have gone through the notorised declaration by Mrs.Najoo Bhiwandiwala dated 29th August 2002 para 16(A) of which reveals that price of property was fixed. Para (b) of clause speaks about forfeiture of advance money of 10 lacs and acceptance of Rs.10 lacs by Mrs.Najoo from Modi are important events and unless proper and detail inquiry is done giving sufficient and proper opportunity to all necessary parties to lead evidence, to argue their case, coming to proper conclusion is impossible.”

Thereafter, the learned Additional Commissioner proceeded to observe that in the dispute before him, civil rights of the parties were involved and only Civil Court was competent to decide such issues having jurisdiction in such matters. The Competent Authority observed that Agreement dated 21st March 2003 is not only a Leave and Licence Agreement but it discloses rights created in favour of the respondent and Mr.Modi. Thereafter, the learned Additional

Commissioner has adverted to the suit filed by the said Mr.Modi and the suit filed by the respondent.

15. The learned Additional Commissioner was concerned with the legality and propriety of the order passed by the Competent Authority of declining to grant leave to defend and the consequential order of eviction. The learned Additional Commissioner has not really not gone into the question of legality and proprietary of the order passed by the Competent Authority of declining to grant leave to defend. He has completely misdirected himself by going into other issue relating to rights claimed by Mr.Modi. He has completely ignored the limited scope of the proceedings under section 24 of the said Act. In my view, the impugned judgment and order of the learned Additional Commissioner is perverse.

16. The submission of the learned senior counsel appearing for the petitioners was that as absolutely no case is made out for grant of leave to defend by the respondent, the order of eviction passed by the Competent Authority deserves to be restored. The said submission cannot be acceded to for the simple reason that the learned Additional Commissioner has completely misdirected himself and has not considered the revision application on merits. A remedy of filing revision application is provided under the Statute. As the

revisional Authority has not gone into the merits of the application for leave to defend filed by the respondent, by setting aside the impugned order, the revision application will have to be ordered to be heard afresh in the light of the observations made in this judgment and especially the what is held regarding the scope of the proceedings under section 24 of the said Act.

17. In the circumstances, I pass the following order:

: O R D E R :

- (a) The impugned order dated 17th January 2009 passed by the learned Additional Commissioner, Konkan Division is quashed and set aside and Revision Application No.219 of 2008 is restored to the file of learned Additional Commissioner, Konkan Division.
- (b) The parties are directed to appear before the learned Additional Commissioner on 16th October 2009 for fixing the schedule of hearing.
- (c) The Authority will hear and decide the revision application afresh in the light of observations made by this Court. The revision application shall be decided as expeditiously as possible and preferably on or before end of January 2010.

(d) Till the disposal of the revision application by the Revisional Authority, the order of eviction passed by the Competent Authority shall not be executed subject to condition that the respondent will not create any third party rights in respect of the suit premises and will not part with possession thereof.

(e) If the respondent has not paid agreed licence fees, it will be open for the petitioners to make appropriate application in that behalf before the Revisional Authority.

(f) Writ petition is partly allowed in above terms.

(g) No orders as to costs.

(A.S.OKA,J)