
(2014) 04 BOM CK 0157

In the Bombay High Court

Case No : Writ Petition No. 3886 of 2010 with Civil Application Nos. 2184, 2493 and 2494 of 2010

AMI Merchandising Pvt. Ltd.

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 03-04-2014

Acts Referred:

Constitution of India, 1950 — Article 227
Easements Act, 1882 — Section 60(b)
Maharashtra Rent Control Act, 1999 — Section 15, 15(1), 16, 22, 23
Transfer of Property Act, 1882 — Section 106

Citation : (2014) 3 ABR 324 : (2014) 4 ALLMR 643 : (2014) 3 BomCR 248 : (2014) 3 MhLj 257

Hon'ble Judges : R.G. Ketkar, J

Bench : Single Bench

Advocate : P.K. Dhakephalkar, Senior Advocate, Advocate for the Appellant; S.D. Rairikar, AGP for respondents No. 1 to 3, Mr. Amit Jagoo for Respondent No. 4 and Ms. Nishigandha M. Gurav for Respondent No. 5, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

R.G. Ketkar, J.—Heard Mr. P.K. Dhakephalkar, learned Senior Counsel for the petitioner and Mr. S.D. Rairikar, learned AGP for respondents No. 1 to 3, Mr. Amit Jagoo, learned Counsel for respondent No. 4 and Ms. Nishigandha M. Gurav, learned Counsel for respondent No. 5 at length. Rule. The learned Counsel for the respective respondents waive service. At the request and by consent of the learned Counsel appearing for the parties, rule is made returnable forthwith and the petition is taken up for final hearing. By this petition under Article 227 of the Constitution of India, the petitioners have challenged i) the judgment and order dated 14/07/2008 rejecting the application made by the petitioners for leave to defend ii) the order dated 14/07/2008 rejecting the Intervener's Application dated 11/06/2008 filed by one Mr. Nirav Modi and iii) the judgment and order dated 14/07/2008 passed by the Competent Authority (Rent Act) Konkan

Division, Mumbai (for short "the Competent Authority") in Case No. 7 of 2008 allowing the application made by the respondents No. 4 & 5 u/s 24 of the Maharashtra Rent Control Act, 1999 (for short "Maharashtra Rent Act"). The petitioners were directed to hand over the vacant and peaceful possession of the premises as more particularly described in paragraph 1 of judgment i.e.

a. Apartment No. 1 admeasuring 510.43 sq. meters (5492.43 sq. ft) built up area on the ground floor of the said property.

b. One covered car park under the shed admeasuring 12.5 sq. meters and open car parking space admeasuring 12.5 sq. meters, both in the front compound of the said property.

c. Right to use the rear area of the said property admeasuring about 82.15 sq. meters for parking vehicles situated at the lower ground level of the said property, which was to be used as a common passage jointly with the owners and/or other occupants of the said property.

d. Joint user of the front garden admeasuring about 173.43 sq. meters in the front compound of the said property, to be used by the Licensee's directors, their immediate family members and invitees jointly with the owners as and when required subject to certain conditions provided in Clause 11 of the said agreement.

e. Residential Apartment No. 2 admeasuring about 431.34 sq. meters (4641.33 sq. ft.) built up area on a portion of the 1st floor of the said property.

f. One covered car park under the shed admeasuring about 12.5 sq. meters and one open car parking space admeasuring 12.5 sq. meters, both in the front compound of the said property.

(for short "suit premises") to the respondents No. 4 & 5. The petitioners were directed to pay the arrears of compensation at the agreed rate of Rs. 1 lac per month for the period from 27/06/2006 to 27/02/2008 and further to pay the damages to the respondents No. 4 & 5 at a double rate of compensation per month from 28/02/2008 till handing over possession of the suit premises to them. Respondents No. 4 & 5 were ordered to return balance amount of security deposit after deducting arrears of compensation and damages to the petitioners at the time of receiving vacant and peaceful possession of the suit premises from the petitioners.

2. The petitioners have also challenged the judgment and order dated 05/03/2010 passed by the Additional Commissioner, Konkan Division, Mumbai (for short "Commissioner") rejecting the revision application preferred by the petitioners u/s 44 of the Maharashtra Rent Act. The Commissioner directed the petitioners to pay forthwith a sum of Rs. 26 lacs towards arrears of damages upto 28/02/2010 to the respondents No. 4 & 5 and further directed them to pay to them a sum of Rs. 2 lacs per month towards damages in the first week of every month from 28/02/2010 onwards till handing over vacant and peaceful

possession of the suit premises. Respondents No. 4 & 5 were directed to refund security deposit of Rs. 6 Crores to the petitioners upon their handing over vacant and peaceful possession of the suit premises. By prayer clause (b), the petitioners have prayed for quashing and setting aside warrant of possession dated 06/03/2010 issued by the Competent Authority. By prayer clause (c), the petitioners have prayed for issue of writ of mandamus or any other writ or order or direction restraining respondents No. 1 to 6 in any manner acting upon and/or implementing warrant of possession dated 06/03/2010. The facts and circumstances giving rise to the filing of present petition briefly stated are as under.

3. One Ms. Najoo B. Bhiwandiwalla, hereinafter referred to as the former owner, was the owner of the property known as "Nepean House", B.G. Kher Marg, Malbar Hill, Mumbai wherein the suit premises is situate. Under the agreement dated 28/02/2002, one M/s. Dream Trading Private Company Limited had given to the former owner interest free security deposit of Rs. 6 crores for due performance of the terms and conditions of leave and licence agreement. The said company however never demanded the refund of the amount of security deposit. The former owner executed leave and licence agreement dated 21/03/2003 whereby the petitioners were inducted in the suit premises. The suit premises were given to the petitioners for residential purpose. It appears that since the execution of the agreement, none occupied the suit premises. The petitioners were however carrying out additions and alterations in the suit premises from time to time. Though the petitioners had agreed to pay security deposit of Rs. 6 Crores at the time of execution of leave and licence agreement, the said amount was not paid. The petitioners claimed to have paid that amount to M/s. Dream Trading Company Private Limited on behalf of the former owner. The former owner thereafter entered into supplementary agreement on 08/09/2004 which was to expire on 27/02/2008. On 13/12/2007, the former owner sold the entire "Nepean House" including the suit premises to the respondents No. 4 & 5. It appears that the former owner had instituted Application No. 28 of 2006 against the petitioners alleging breach of the terms and conditions of the leave and licence agreement and supplementary agreement. The petitioners also instituted L.D. Suit No 45/55 of 2006 for declaration and injunction contending inter alia that they have right of licence in respect of suit premises upto 27/02/2008. Respondents No. 4 & 5 instituted Case No. 7 of 2008 against the petitioners on or about 14/03/2008 on the ground that the period under leave and licence agreement expired on 27/02/2008. Respondents No. 4 & 5 also claimed that they are shortly moving application for joining them as a party in Application No. 28 of 2008 instituted by the former owner.

4. During the pendency of that application, one Mr. Nirav Modi filed an application on 11/06/2008 for intervention contending that the former owner had granted option to him to purchase the suit premises and accordingly, he has exercised that option. He has also instituted suit bearing No. 1166 of 2006 on the Original

Side of this Court for specific performance of contract. Even in Application No. 28 of 2006 filed by the former owner, he had filed application for joining him as a party in that application. Since he has acquired right, title and interests in the suit premises, he prayed for joining him as respondent in the application. As noted earlier, the said application was rejected by the Competent Authority on 14/07/2008.

5. The petitioners filed application for leave to defend. By the judgment and order dated 14/07/2008, the Competent Authority rejected that application. By separate order dated 14/07/2008, the Competent Authority allowed the application filed by respondents u/s 24 of the Maharashtra Rent Act.

6. The petitioners instituted Revision Application No. 219 of 2008 challenging the orders dated 14/07/2008 passed by the Competent Authority. By the judgment and order dated 10/01/2009, the Commissioner set aside the orders dated 14/07/2008 refusing leave to defend as also allowing the application filed by the respondents No. 4 & 5 u/s 24 of the Maharashtra Rent Act. The Competent Authority was directed not to take any decision till the civil suits pending in the Small Causes Court and High Court are finally decided. Aggrieved by this decision, the respondents instituted Writ Petition No. 2682 of 2009. By the judgment and order dated 11/09/2009, this Court quashed and set aside the order passed by the Commissioner and restored the revision application to the file of the Commissioner. The Commissioner was directed to decide afresh revision application in the light of the observations made in that order by this Court. Till the disposal of the revision application by the Revisional Authority, this Court directed that the order of the eviction passed by the Competent Authority shall not be executed subject to condition that the petitioners will not create any third part rights in respect of the suit premises as also will not part with possession thereof. The said judgment is since then reported in Surendra B. Agarwal and Another Vs. AML Merchandising Pvt. Ltd., .

7. In pursuance thereof, the Commissioner decided the revision application and confirmed the orders passed by the Competent Authority. It is against these orders, the petitioners have instituted the present petition under Article 227 of the Constitution of India.

8. In support of this petition, Mr. Dhakephalkar strenuously contended that the Competent Authority committed serious error in refusing to grant leave to defend. He submitted that the petitioners have raised substantial defence and triable issues. In the first place, by clause 15 of the leave and licence agreement dated 21/03/2003, the parties acknowledged and recognized an oral agreement between the former owner and Mr. Nirav Modi where under Mr. Nirav Modi and/or his nominee was granted an option to purchase the suit premises at any time during the period from 01/04/2003 to 26/02/2008. In the event of the option holder exercising the aforesaid option and becoming the owner of the suit premises by execution of appropriate agreement(s) for sale or conveyance(s) of the suit premises after having paid appropriate stamp duty thereon, as then

applicable, the petitioners herein were to observe, perform and carry out their obligations under this licence agreement and the licence created in favour of option holder as purchaser and were to hand over vacant and peaceful possession to the purchaser instead of licensor upon expiry or sooner determination of the licence. In such event, the option holder was as a purchaser, from and after the date of the purchase, to observe and perform his obligations under the leave and licence agreement in respect of the suit premise and was on expiry or sooner determination and against the petitioners handing over to the option holder as a purchaser, vacant and peaceful possession of the suit premises, to refund to the petitioners the security deposit paid by them to the respondents. He submitted that in pursuance of this clause, Mr. Nirav Modi has instituted suit on the Original Side of this Court for specific performance of contract. The same is pending. He submitted that in view of clause 15 of the leave and licence agreement, it is abundantly clear that oral agreement was entered into between the former owner and Mr. Nirav Modi whereunder she agreed to sell the suit premises to him. He submitted that this was a valid defence and raises a triable issue. The defence so raised is not a moon-shine or illusory just for the sake of opposing the application u/s 24 of the Maharashtra Rent Act.

9. Mr. Dhakephalkar also relied upon clause 12.1 of the agreement which entitles the petitioners to carry out structural alterations and additions to the suit premises subject to fulfillment of the conditions stipulated therein. In pursuance of this clause, the petitioners have executed a work of permanent character/nature and incurred expenses for the execution thereon. He, therefore, submitted that the licence so created by respondents No. 4 & 5 in favour of petitioners cannot be revoked in view of section 60(b) of the Indian Easements Act, 1882 (for short "Easements Act"). This is also a substantial defence to the application filed by respondents No. 4 & 5 u/s 24 of the Maharashtra Rent Act. He submitted that the authorities below committed serious error in refusing to grant leave to defend. He invited my attention to sections 43(4)(a) as also 43(4)(b) of the Maharashtra Rent Act. He submitted that section 43(4)(b) mandates the Competent Authority to give to the tenant or to licensee, as the case may be, leave to contest the application if the affidavit filed by the tenant or licensee discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the suit premises on the ground specified in sections 22 or 23 or 24 of the Maharashtra Rent Act. In the present case, the application made by the petitioners for leave to defend discloses facts which clearly disentitle the respondents No. 4 & 5 from obtaining an order for the recovery of possession of the suit premises on the ground specified u/s 24 of the Maharashtra Rent Act. In support of his submission, he relied upon the decisions of the Apex Court i) in the case of Precision Steel and Engineering Works and Another Vs. Prem Deva Niranjan Deva Tayal, & in the case of ii) Inderjeet Kaur Vs. Nirpal Singh,

10. He invited my attention to the section 25B of the Delhi Rent Control Act,

1958 (for short "Delhi Rent Act") and in particular, sub-sections (4) & (5) thereof and submitted that these provisions are pari materia with the provisions of sections 43(4)(a) and 43(4)(b) of the Maharashtra Rent Act. The Apex Court in case of Precision Steel & Engineering Works (supra) observed in paragraph 11 that subsection (5) of section 25B casts a statutory duty on the Controller to give to the tenant leave to contest the application, the only precondition for exercise of jurisdiction being that the affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the premises. The said judgment was followed in case of Indrajeet Kaur (supra.)

11. Mr. Dhakephalkar in all seriousness made grievance against the order dated 06/03/2010 passed by the Competent Authority. The said order was passed in Misc. Application No. 10 of 2010 dated 6th March 2010 filed by the respondents No. 4 & 5 u/s 45 of the Maharashtra Rent Act for issuance of warrant of possession against the petitioners directing them to vacate and hand over possession of the suit premises to them. By order dated 06/03/2010, the Competent Authority issued warrant of possession and respondents No. 4 & 5 obtained possession of the suit premises. He submitted that section 45 of the Maharashtra Rent Act lays down that if any person refuses or fails to comply with the order of eviction made u/s 43 within 30 days of the date on which it has become final, the Competent Authority or any other officer duly authorised by the Competent Authority in his behalf, may evict that person from, and take possession of the premises and deliver the same to the landlord and for that purpose, use such force as may be necessary. He submitted that the Competent Authority passed the order on 04/07/2008. The Commissioner dismissed revision application on 05/03/2010 without waiting for 30 days of the date on which the order of the Competent Authority becomes final, the respondents No. 4 & 5 made application on 06/03/2010 and the Competent Authority without waiting for the expiry of the period prescribed u/s 45, passed the order on the same day that too even without issuing notice to the petitioners. The petitioners were not served with the copy of the application and were also not heard. On the basis of the order dated 06/03/2010, the respondents No. 4 & 5 executed warrant of possession and obtained possession. He submitted that the Competent Authority committed serious error while exercising power in that regard as also the respondents No. 4 & 5 high handedly obtained possession of the suit premises within 3 days from the date of passing of the order by the Commissioner even without giving any breathing time to the petitioners for challenging the orders passed by the authorities below. He also invited my attention to the orders passed by this Court from time to time during the pendency of the petition. For all these reasons he submitted that the petition requires serious consideration.

12. On the other hand, Mr. Amit Jagoo supported the impugned orders. He submitted that the former owner had executed leave and licence agreement on 21/03/2003 whereby the petitioners were inducted in the suit premises. The former owner thereafter entered into a supplementary agreement dated

08/09/2004 which expired on 27/02/2008. On 13/12/2007, the former owner sold the entire "Nepean House" including suit premises to the respondents No. 4 & 5. Respondents No. 4 & 5 instituted Case No. 7 of 2008 against the petitioners on or about 14/03/2008 before the Competent Authority on the ground that the period under leave and licence agreement expired on 27/02/2008. He submitted that an agreement of licence in writing is conclusive evidence of fact stated therein. He heavily relied upon the decision of this Court in case of Surendra B. Agarwal (supra) between the same parties. He further submitted that the decisions of the Apex Court in the cases of Precision Steel & Engineering Works (supra) & Indrajeet Kaur (supra) are not applicable to the facts of the present case as the proceedings for eviction in those cases were instituted under the provisions of Delhi Rent Act. The provisions of Delhi Rent Act and the provisions of Maharashtra Rent Act are not *pari materia*. He submitted that in case of Surendra B. Agarwal (supra), it has been held by this Court that all that is required to be examined is (i) whether the applicant is a licensor and whether the opponent is a licensee (ii) whether there was a leave and licence agreement for residential use of the suit premises. In a case where a licensee is claiming other rights in relation to the premises in dispute, adjudication of such rights cannot be made by the Competent Authority. In the present case, the suit premises were given on leave and licence for a residential purpose. He, therefore, submitted that the authorities below were fully justified in passing the impugned orders. Insofar as the order dated 06/03/2010 passed by the Competent Authority is concerned, Mr. Jagoo was not in a position to defend that order.

13. I have considered the rival submissions made by the learned Counsel appearing for the parties. I have also perused the material on record. It is not in dispute that the former owner had executed leave and licence agreement dated 21/03/2003 whereby the petitioners were inducted in the suit premises. The suit premises were given to the petitioners for a residential purpose. The former owner thereafter, entered into supplementary agreement dated 08/09/2004 which expired on 27/02/2008. It is also not in dispute that on 13/12/2007, the former owner sold the entire "Nepean House" including the suit premises to respondents No. 4 & 5. The petitioners have instituted L.D. Suit No. 45/55 of 2006 for declaration and injunction contending inter alia that they have right of licence in respect of the suit premises upto 27/02/2008. Mr. Nirav Modi has also instituted suit bearing No. 1166 of 2006 on the Original Side of this Court for specific performance of contract. Mr. Dhakephalkar submitted that under clause 15 of the leave and licence agreement dated 21/03/2003, the parties acknowledged and recognized an oral agreement entered into between the former owner and Mr. Nirav Modi whereunder an option to purchase the suit premises at any time during the period from 01/04/2003 to 26/02/2008 was given. In pursuance of this, Mr. Nirav Modi has instituted a suit on the Original Side of this Court for specific performance of contract and the same is pending. He submitted that it is a valid and substantial defence to the proceedings

instituted by the respondents u/s 24 of the Maharashtra Rent Act. The said defence also raises a triable issue. He also relied upon clause 12.1 of the agreement which entitles the petitioner to carry out structural alterations and additions to the suit premises. He submitted that the licence created by the respondents No. 4 & 5 in favour of the petitioners cannot be revoked in view of section 60(b) of the Easements Act. This is also a substantial defence to the application filed by the respondents No. 4 & 5 u/s 24 of the Maharashtra Rent Act. The defence so raised by the petitioners is not a moon-shine or illusory defence just for the sake of opposing the application filed by the respondents No. 4 & 5 u/s 24 of the Maharashtra Rent Act. He heavily relied upon the decisions of the Apex Court in cases of Precision Steel & Engineering Works (supra) & Indrajeet Kaur (supra).

14. The contentions raised by Mr. Dhakephalkar were also raised before the authorities below. The contention that Mr. Nirav Modi had become owner of the suit premises was considered by the Competent Authority from paragraphs 6 to 12. In paragraph 10, the Competent Authority observed that the petitioners admitted in L.D. Suit instituted by them in the Small Causes Court that they are in possession of the suit premises on the basis of the leave and licence agreement. It is an admitted fact that as per leave and licence agreement, the petitioners herein are licensee and not Mr. Nirav Modi. Section 24(3) of the Maharashtra Rent Act lays down that the Competent Authority shall not entertain any claim of whatever nature from any other person who is not licensee according to the agreement of licence. The Competent Authority observed that as per leave and licence agreement, the petitioners are licensee and not Mr. Nirav Modi and consequently, it is not necessary to consider the alleged claim of Mr. Modi. It was further observed that in L.D. Suit instituted in the Small Causes Court Mumbai, an injunction order was passed in favour of the petitioners. In the appeal, order of the trial Court was modified and former owner was temporarily restrained from obstructing or interfering into the possession of the petitioner till its eviction from the suit premises by following due process of law. The Competent Authority also considered paragraph 7 of the leave to defend application.

15. The Competent Authority considered the case of irrevocable licence made out by the petitioners on the basis of section 60(b) of the Easements Act. It was observed that merely because licensee was permitted to make certain additions and alterations in the suit premises for more beneficial enjoyment of the premises will not amount to creation of irrevocable licence. After considering section 24 of the Maharashtra Rent Act and the decision of this Court in case of Ramesh Ramrao Hate Vs. Parvez B. Bhesania, and Swani Attah Vs. Thrity Poonawala, 1997 (i) AIRCG 513, it was held that agreement of leave and licence in writing is conclusive evidence of fact stated therein. The Competent Authority accordingly allowed the application u/s 24 of the Maharashtra Rent Act.

16. As far as order dated 05/03/2010 passed by the Commissioner is concerned,

in paragraph 5, the Commissioner adverted to section 24 of the Maharashtra Rent Act and the fact that the petitioner herein accepted existence of registered leave and licence agreement dated 21/03/2003. The Commissioner also considered the case of irrevocable licence made out by the petitioners on the basis of section 60(b) of the Easements Act and considered the decision of the Kerala High Court in case of Geetha Varma and Others Vs. V.K. Amminikutty Nambishtathiri Amma and Others, and decision of Karnataka High Court in case of Skylines Advertising (P) Ltd. Vs. National Airport Authority and Another, . The Commissioner also considered clause 12.5 and clause 16 of the leave and licence agreement. As per clause 12.5 of the supplementary agreement, the licensee was to remove at its own costs all furniture, fixtures, fittings and additions in the premises made or done by the licensee and similarly clause (1) thereof provided that the licensee shall pay to the licensor Rs. 1.50 Crores as compensation for restoration of the premises to its original condition. Clause 16 provided that nothing contained in the agreement shall be construed as creating any right, interest, easement, tenancy or sub-tenancy in favour of licensee in or over or upon the premises or any part thereof other than the licence granted. The Commissioner also noted that the petitioner did not produce any document on the basis of which claim of irrevocable licensee could be sustained. Insofar as the option to purchase the suit premises by Mr. Nirav Modi is concerned, the Commissioner recorded in paragraphs 14 and 16 that Advocate for the petitioner did not press rights of Mr. Nirav Modi. That apart, having regard to section 24(3) of the Maharashtra Rent Act, I do not find that the authorities below committed any error in not entertaining claim made by Mr. Nirav Modi being a third party.

17. Mr. Dhakephalkar heavily relied upon decision of the Apex Court in case of Precision Steel & Engineering Works (supra) & Indrajeet Kaur (supra). It is therefore necessary to consider those decisions in detail. Both these cases arose out of the provisions of Delhi Rent Act. In case of Precision Steel & Engineering Works (supra), the respondent M/s. Prem Deva Niranjana Deva Tayal (HUF) through Prem Deva Tayal, constituted attorney of Niranjana Deva Tayal (landlord) instituted petition u/s 14(1) proviso (e) read with section 25B of the Delhi Rent Act for recovery of possession of front portion of premises bearing No. B-144, Greater Kailash Part I, New Delhi, on the ground that premises were let out for residential purpose and are now required by the landlord for occupation as residence for himself and members of his family dependent on him and that the landlord has no other reasonable suitable accommodation. To that petition, he impleaded M/s. Precision Steel & Engineering Works (tenant), a firm and Shri B.K. Beriwalla constituted attorney of the firm. After the summons was served on the tenant and its constituted attorney, Shri B.K. Beriwalla appeared and filed an affidavit seeking leave to contest eviction petition. It was contended that lease was for residential-cum-commercial purpose. A specific agreement was pleaded that the tenant which is a partnership was entitled to use the premises for residence of the director and/or partner as also for the office purpose. Reliance was placed on clause (6) of the licence agreement which according to the tenant

substantiated that it was a contract of lease. The Apex Court considered the provisions of section 14(1) proviso (e) and 25B of the Delhi Rent Act. In paragraph 8, it was observed that when the summons is served, the tenant cannot straight way proceed to contest the petition for eviction from the premises but he must surrender possession or seek leave to contest the petition. While seeking leave, he must file affidavit setting out the grounds on which he seeks to contest the application for eviction. This is the scheme of section 25B(1) and (4). Section 25B(5) provides that the Controller is under a statutory duty to give leave to the tenant to contest the application if the affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the premises on the ground mentioned in section 14(1) proviso (e) i.e. bonafide requirement for his personal use or the use of the members of his family.

18. In paragraph 9, the Apex Court considered the scheme of the Delhi Rent Act also the statutes in other states. It was observed that what would the Court expect the landlord to prove before he seeks to recover possession from the tenant on the ground that he bonafide requires possession for his own use or for the use of the members of his family. In a catena of decisions it has been decided that in order to succeed the landlord should show that the premises have been let out as a residence or for residential purposes; that the landlord needs to occupy the premises which may imply that either he has got no other accommodation in the city or town in which the premises in question are situated or the one in his possession does not provide him a suitable residence and he is required to shift to the premises in question; that his need is genuine and that it is not merely a fanciful desire of an affluent landlord who for the fancy of changing the premises would like to shift to the one from which the tenant is sought to be evicted; that he is acting bona fide in approaching the court for recovery of possession; and that his demand is reasonable. These facts have to be proved to the satisfaction of the court and once the trend of judicial opinion as expressed by the court went so far as to say that the court cannot pass a decree on compromise because the statute has cast duty on the court to be satisfied about the requirement of the landlord and a compromise decree was held to be a nullity (Bahadur Singh and Another Vs. Muni Subrat Dass and Another, and Kaushalya Devi and Others Vs. Shri K.L. Bansal, . Certain States have in their respective legislations also imposed an additional condition before the landlord can obtain possession for personal requirement viz. before making a decree or order of eviction the court must weigh the relative hardship of the landlord and the tenant and if greater hardship is likely to be caused to tenant, the court is under an obligation to refuse to pass the decree notwithstanding the fact that landlord has proved his requirement. Restrictions on the landlord's unfettered right to re-entry may be stringent or not so stringent depending upon the local situation. But the underlying thrust of all rent restriction legislations universally recognised must not be lost sight of that the enabling provisions of the Rent Restriction Act are not to be so construed or interpreted as would make the

protection conferred on the tenant illusory by a liberal approach to the desire of the landlord to evict tenant under the camouflage of personal requirement. The Apex Court also considered the decision in case of Mst. Bega Begum and Others Vs. Abdul Ahad Khan (Dead) by Lrs. and Others, , where it was held that the expression "reasonable requirement" in section 11(h) of the Jammu & Kashmir House and Shops Rent Control Act, 1966, undoubtedly, postulates that there must be an element of need as opposed to a mere desire or wish. In paragraph 10, the Apex Court posed a question namely "when a landlord approaches Controller u/s 14(1) proviso (e), is the court to presume every averment in the petition as unchallengeable and truthful?"

19. The consequence of refusal to grant leave must stare in the face of the Controller that the landlord gets an order of eviction without batting the eye lid. This consequence itself is sufficient to liberally approach the prayer for leave to contest the petition. While examining the question whether leave to defend ought or ought not to be granted the limited jurisdiction which the Controller enjoys is prescribed within the well defined limits and he cannot get into a sort of a trial by affidavits preferring one set to the other and thus concluding the trial without holding the trial itself. Short circuiting the proceedings need not masquerade as a strict compliance with subsection (5) of section 25B. The provision is cast in a mandatory form. Statutory duty is cast on the Controller to give leave as the legislature uses the expression "the Controller shall give" to the tenant leave to contest if the affidavit filed by the tenant discloses such fact as would disentitle the landlord for an order for recovery of possession. The Controller has to look at the affidavit of the tenant seeking leave to contest. Browsing through the affidavit if there emerges averment of facts which on a trial, if believed, would non-suit the landlord, leave ought to be granted.

20. In paragraph 11, it was observed that upon a true construction of proviso (e) to section 14(1) it would unmistakably appear that the burden is on the landlord to satisfy the Controller that the premises of which possession is sought is; (i) let for residential purposes; and (ii) possession of the premises is required bona fide by the landlord for occupation as residence for himself or for any member of his family etc. and (iii) that the landlord or the person for whose benefit possession is sought has no other reasonably suitable residential accommodation. This burden, landlord is required to discharge before the Controller gets jurisdiction to make an order for eviction. This necessarily transpires from the language of section 14(1) which precludes the Controller from making any order or decree for recovery of possession unless the landlord proves to his satisfaction the conditions in the enabling provision enacted as proviso under which possession is sought. Initial burden is thus on the landlord.

21. In paragraph 12, the Apex Court observed that the question is whether this burden is in any way diluted or stands discharged or wholly shifted to the tenant because of a different procedure prescribed in Chapter III-A of the Act. Section 25(4) provides that in default of the appearance of the tenant in pursuance of

the summons or his obtaining such leave, the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant and the landlord shall be entitled to an order for eviction on the ground set out in section 14(1) proviso (e). On a combined reading of section 14(1) proviso (e) with section 25B(1) and (4) the legal position that emerges is that on a proper application being made in the prescribed manner which is required to be supported by an affidavit, unless the tenant obtains leave to defend as contemplated by sub-sections (4) and (5) of section 25B, the tenant is deemed to have admitted all the averments made in the petition filed by the landlord. The effect of these provisions is that the Controller would act on the admission of the tenant and there is no better proof of fact as admission, ordinarily because facts which are admitted need not be proved. But what happens if the tenant appears pursuant to the summons issued under sub-sec(2) of section 25B, files an affidavit stating the grounds on which he seeks to contest the application. As a corollary it would transpire that the facts pleaded by the landlord are disputed and controverted. How is the Controller thereafter to proceed in the matter. It would be open to the landlord to contest the application of the tenant seeking leave to contest and for that purpose he can file an affidavit in reply but production and admission and evaluation of documents at that stage has no place. The Controller has to confine himself to the affidavit filed by the tenant under sub-section (4) and the reply, if any. On perusing the affidavit filed by the tenant and the reply if any filed by landlord, the Controller has to pose to himself the only question: Does the affidavit disclose, not prove, facts as would disentitle the landlord from obtaining an order for the recovery of possession on the ground specified in Clause (e) of the proviso to section 14(1). The Controller is not to record a finding on disputed questions of facts or his preference of one set of affidavits against other set of affidavits. That is not the jurisdiction conferred on the Controller by sub-sec (5) because the Controller while examining the question whether there is a proper case for granting leave to contest the application has to confine himself to the affidavit filed by the tenant disclosing such facts as would prima facie and not on contest disentitle the landlord from obtaining an order for recovery of possession. At the stage when affidavit is filed under subsection (4) by the tenant and the same is being examined for the purposes of sub-section (5) the Controller has to confine himself only to the averments in the affidavit and the reply, if any, and that becomes manifestly clear from the language of sub-section (5) that the Controller shall give to the tenant leave to contest the application if the affidavit filed by the tenant discloses such facts as would disentitle the landlord from recovering possession etc. The jurisdiction to grant leave to contest or refuse the same is to be exercised on the basis of the affidavit filed by the tenant. That alone at that stage is the relevant document and one must confine to the averments in the affidavit. If the averments in the affidavit disclose such facts which, if ultimately proved to the satisfaction of the Court, would disentitle the landlord from recovering possession, that by itself makes it obligatory upon the Controller to grant leave. It is immaterial that facts alleged and disclosed are controverted by the landlord

because the stage of proof is yet to come. It is distinctly possible that a tenant may fail to make good the defence raised by him. Plausibility of the defence raised and proof of the same are materially different from each other and one cannot bring in the concept of proof at the stage when plausibility has to be shown. It was further observed that the regular trial required to be held by a Court of Small Causes as contemplated by sub-section (6) read with sub-section (7) of section 25B is not to be substituted by affidavits and counter-affidavits at the stage of considering tenant's affidavit filed for obtaining leave to contest the petition under subsection (4). Sub-section (6) enjoins a duty on the Controller where leave is granted to the tenant to contest the application to commence the hearing of the petition as early as practicable and sub-section (6) prescribes procedure to be followed as if the Controller is a Court of Small Causes. The Court of Small Causes follows the summary procedure in the adversary system where witnesses are examined and cross-examined and truth of averment is decided on the touchstones of cross-examination. A speedy trial not conforming to the well-recognised principle of arriving at truth by testing evidence on the touchstone of cross-examination, should not be easily read into the provision at a stage not contemplated by the provision unless the statute positively by a specific provision introduces the same. The scheme of section 25B does not introduce a trial for arriving at the truth at the stage of proceeding contemplated by subsection (4) of section 25B.

22. The Apex Court thereafter considered the provisions of Order 37 of C.P.C. & 25B(5) of the Delhi Rent Act. After considering the decisions, ultimately in paragraph 15, it was observed that assuming that Order 37, sub-rule (5) of Rule 3 confers wider discretion on the Court that by mere comparison cannot cut down or narrow or limit the power coupled with the duty conferred on the Controller under sub-section(5) of section 25B. Mere disclosure of facts which when proved in a regular trial which would disentitle the landlord to obtain relief, such disclosure only impels the Controller to grant leave. It is not necessary to record as required by Order 37 Rule 5 whether the defence is substantial or frivolous as vexatious. The Court found it difficult to subscribe to the view that the jurisdiction u/s 25B(5) is very limited.

23. In paragraph 18, it was observed that it is indisputable that while examining the affidavit of the tenant filed under s. 25B(4) for the purpose of granting or refusing to grant leave to contest the petition the landlord who has initiated the action has to be heard. It would follow as a necessary corollary that the landlord may controvert the averments made in the affidavit of the tenant but the decision to grant or refuse leave must be based on the facts disclosed in the affidavit. If they are controverted by the landlord that fact may be borne in mind but if the facts disclosed in the affidavit of the tenant are contested by way of proof or disproof or producing evidence in the form of other affidavits or documents that would not be permissible. It is not the stage of proof of facts, it is only a stage of disclosure of facts. Undoubtedly, the rules of natural justice apart from the adversary system we follow must permit the landlord to contest

affidavit filed by the tenant and he can do so by controverting the same by an affidavit. That would be an affidavit in reply because tenant's affidavit is the main affidavit being treated as an application seeking leave to contest the petition. Any attempt at investigating the facts whether they appear to be proved or disproved is beyond the scope of sub-section (5) of section 25B.

24. In paragraph 22, it was observed that the Controller has to confine himself indisputably to the condition prescribed for exercise of jurisdiction in sub-section (5) of section 25B. In other words, he must confine himself to the affidavit filed by the tenant. If the affidavit discloses such facts--no proof is needed at the stage, which would disentitle the plaintiff from seeking possession, the mere disclosure of such facts must be held sufficient to grant "leave because the statute says on disclosure of such facts the Controller shall grant leave".

25. It was further observed that it is difficult to be exhaustive as to what such facts could be but ordinarily when an action is brought u/s 14(1) proviso (e) of the Act whereby the landlord seeks to recover possession on the ground of bona fide personal requirement if the tenant alleges such facts as that the landlord has other accommodation in his possession; that the landlord has in his possession accommodation which is sufficient for him; that the conduct of the landlord discloses avarice for increasing rent by threatening eviction; that the landlord has been letting out some other premises at enhanced rent without any attempt at occupying the same or using it for himself; that the dependents of the landlord for whose benefit also possession is sought are not persons to whom in eye of law the landlord was bound to provide accommodation; that the past conduct of the landlord is such as would disentitle him to the relief of possession; that the landlord who claims possession for his personal requirement has not cared to approach the Court in person though he could have without the slightest inconvenience approached in person and with a view to shielding himself from cross-examination prosecutes litigation through an agent called a constituted attorney. These and several other relevant but inexhaustible facts when disclosed should ordinarily be deemed to be sufficient to grant leave.

26. As noted earlier, the respondent filed application u/s 24 of the Maharashtra Rent Act. The preamble of the Act reads as under:

Whereas it is expedient to unify, consolidate and amend the laws prevailing in the different parts of the State relating to the control of rents and repairs of certain premises and of eviction and for encouraging the construction of new houses by assuring a fair return and to provide for the matters connected with the purposes aforesaid; It is hereby enacted in the Fiftieth year of the Republic of the India as follows.

27. The Maharashtra Rent Control Bill dated 26th July 1993 seeks to ensure that the protection afforded by three acts namely; i) The Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 ii) the Central Provinces and Berar Letting of Houses and Rent Control Order, 1949 and iii) Hyderabad Houses (Rent,

Eviction and Lease) Control Act, 1954 in force in the State remain unimpaired by providing categorically that no tenant can be evicted as long as he continues to pay the amount of standard rent and permitted increases, if any, and observes and performs the other conditions of tenancy, (section 15(1)), the only exception being when the landlord needs the premises for his own bona fide personally residence. The Bombay Rent Act provided special relief of making application to the Competent Authority for possession of the premises, by the landlords, who have given premises on licence, and by the members of the armed forces and scientists in the department of Atomic Energy, Government of India, who require the premises for bona fide use by themselves. It is possible for these categories of landlords to gain from their tenants the possession of any premises on expiry of the period of licence or, in the case are bona fide required by the applicant for accommodation for himself or by member of his family. The provisions relating to licences and the members of the armed forces, scientists and Government servants were extended to the whole State and it is expected that the provisions relating to the summary disposal of application by the Competent Authority will have the desired effect of curtailing the delay in the disposal of these cases. That in view, clause 44 provides that no appeal shall lie against an order for the recovery of possession of premises made by the Competent Authority. A revision under the said clause will lie to the State Government.

28. Chapter III of the Act is entitled "the relief against forfeiture". Section 15(1) provides that no ejectment ordinarily to be made if tenant pays or is ready and willing to pay standard rent and permitted increases and observes and performs the other conditions of the tenancy, in so far as they are consistent with the provisions of the Act. Sub-section (2) thereof lays down that no suit for recovery of possession shall be instituted by a landlord against the tenant on the ground of non-payment of the standard rent or permitted increases due, until the expiration of ninety days next after notice in writing of the demand of the standard rent or permitted increase has been served upon the tenant in the manner provided in section 106 of the Transfer of Property Act, 1882. Subsection (3) lays down that no decree of eviction shall be passed by the court in any suit for recovery of possession on the ground of arrears of standard rent and permitted increases, if, within a period of ninety days from the date of service of the summons of the suit, the tenant pays or tenders in court the standard rent and permitted increases then due together with simple interest on the amount of arrears at fifteen per cent per annum; and thereafter continues to pay or tenders in court regularly such standard rent and permitted increases till the suit is finally decided and also pays costs of the suit as directed by the court. Chapter IV is entitled "recovery of possession". Section 16 thereof provides when the landlord may recover the possession. Section 16 enumerates the grounds on which the landlord is entitled to recover possession of the premises. These grounds are covered by clause (a) to (n) subject to satisfaction of the conditions and limitations set out therein. Section 22 thereof, provides for recovery of possession in case of tenancy created during service period. Chapter V is entitled

"special provisions for recovery of possession in certain cases". Section 23 lays down that a members of armed forces of the Union, Scientists or their successor-in-interest shall be entitled to recover possession of the premises required for their occupation. Then comes section 24 which lays down that notwithstanding anything contained in this Act, a licensee in possession or occupation of premises given to him on licence for residence shall deliver possession of such premises to the landlord on expiry of the period of licence; and on the failure of the licensee to so the deliver possession of the licenced 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 for eviction of the licensee. Explanation (b) for the purpose of section 24 lays down that an agreement of licence in writing shall be conclusive evidence of the fact stated therein.

29. When the landlord desires to initiate eviction proceeding on the ground under sections 15 & 16 of the Maharashtra Rent Act, he has to institute those proceeding u/s 33. Section 33(1) lays down that notwithstanding anything contained in any law for the time being in force, but subject to the provisions of Chapter VIII and notwithstanding that by reason of the amount of the claim or for any other reason, the suit or proceeding would not, but for this provision, be within its jurisdiction,---

(a) In Brihan Mumbai, the Court of Small Causes, Mumbai,

(b) in any area for which a Court of Small Causes is established under the Provincial Small Causes Courts, Act, 1887, (IX of 1887), such court, and

(c) elsewhere, the Court of the Civil Judge (Junior Division) having jurisdiction in the area in which the premises are situate or, if there is no such Civil Judge, the Court of the Civil Judge (Senior Division) having ordinary jurisdiction, shall have jurisdiction to entertain and try any suit or proceeding between a landlord and a tenant relating to the recovery of rent or possession of any premises and to decide any application made under this Act (other than the applications which are to be decided by the State Government or an officer authorised by it or the Competent Authority).

30. Chapter VIII is entitled "Summary Disposal of Certain Applications". Section 39 lays down that the provisions of this Chapter or any rule 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.

31. Section 41 defines the expression "landlord" for the purpose of Chapter VIII. Clause (c) thereof reads as under:

For the purposes of this Chapter, landlord means a landlord who is-

(a)..

(b)..

(c) a person who has given premises on licence for residence or a successor-in-interest referred to in section 24.

32. Section 42 lays down that notwithstanding anything contained in this Act or any other law for the time being in force or any contract to the contrary or any judgment or decree or order of any court, but subject to the provisions of section 22 or 23 or 24, as the case may be; a landlord may submit an application to the Competent Authority, signed and verified in a manner provided in rules 14 & 15 of Order VI of the First Schedule to the C.P.C., as if were a plaint, to the Competent Authority having jurisdiction in the area in which the premises are situated, for the purpose of recovery of possession of the premises from the tenant or licensee, as the case may be. In other words, only for the purpose of recovery of possession of the premises from the tenant or licensee as contemplated under sections 22, 23 or 24, provisions of Chapter VIII are applicable.

33. Section 43 provides for special procedure for disposal of applications made by a landlord under Chapter VIII for the recovery of possession. Section 43(4)(a) lays down that the tenant or licensee on whom the summons is duly served in the ordinary way or by registered post in the manner laid down in sub-section (3) shall not contest the prayer for eviction from the premises, unless within thirty days of the service of summons on him as aforesaid, he files an affidavit stating grounds on which he seeks to contest the application for eviction and obtains leave from the Competent Authority as hereinafter provided, and in default of his appearance in pursuance of the summons or his obtaining such leave, the Statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant or the licensee, as the case may be, and the applicant shall be entitled to an order for eviction.

34. Section 43(4)(b) lays down the Competent Authority shall give to the tenant or licensee leave to contest the application if the affidavit filed by the tenant or licensee discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the premises on the ground specified in section 22 or 23 or 24.

35. Section 44 lays down that no appeal shall lie against an order for the recovery of possession of any premises made by the Competent Authority in accordance with the procedure specified in section 43 and in terms of sub-section(2) thereof, remedy of revision is provided against the order of the Competent Authority.

36. Section 47 lays down that save as otherwise expressly provided in the 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 the 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. The provisions of Chapter VIII cannot be invoked for deciding eviction proceeding either u/s 15 or 16 of the Maharashtra Rent Act. Understood thus, decision of the Apex Court in the case of Precision Steel & Engineering Works & Indrajeet Kaur (supra) is not applicable while considering the provisions of Maharashtra Rent Act for deciding applications filed under Chapter VIII of the Maharashtra Rent Act.

37. The Apex Court in case of Prakash H. Jain Vs. Ms. Marie Fernandes, considered the provisions of Chapter VIII of the Maharashtra Rent Act. In paragraph 10, it was observed thus:

10. Chapter VIII of the Act is itself with a caption, "Summary disposal of certain applications" and Section 39 reads that the provisions of Chapter VIII or any rule 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. Therefore, there is hardly any scope to have recourse to any other provisions in the very Act or any other law, when particularly there is specific and clear provisions or stipulation in chapter VIII itself as to how a particular situation has to be handled and what are the powers of the authorities constituted for the purpose of Chapter VIII of the Act. Section 40 envisages the appointment of competent Authority by the government for purposes of exercising powers therein. Section 41 has its own definition of landlord for the purposes of the said chapter and Section 42 provides a special procedure for seeking eviction under the said chapter, and Section 43 provides special procedure, as the Legislature itself calls it to be, for disposal of applications. Sub-section (2) of Section 43 mandates the issue of summons in the form specified in Schedule III, which form indicates, apart from informing the person concerned about the filing of an application seeking for his eviction, the need to appear and contest the application for eviction on the ground mentioned therein and that in default whereof the applicant will be entitled, at any time after the expiry of the period stipulated therefore, to obtain an order for his eviction from the said premises and further as to how the said application should be filed as well. Section 44 states that the order of competent Authority is not appealable and only revision could be sought before the Government or the Authority designated for the purpose.

38. It is further observed in paragraphs 11 & 13 as under:

(11) Sub-section (4) of section 43 of the Act, which is relevant for our purpose reads as follows:

(4)(a) The tenant or licensee on whom the summons is duly served in the ordinary way or by registered post in the manner laid down in Sub-section (3) shall not contest the prayer for eviction from the premises, unless within thirty days of the service of summons on him as aforesaid, he files an affidavit stating grounds on which he seeks to contest the application for eviction and obtains

leave from the Competent Authority as hereinafter provided, and in default of his appearance in pursuance of the summons or his obtaining such leave, the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant or the licensee, as the case may be, and the applicant shall be entitled to an order for eviction on the ground aforesaid.

(b) The competent Authority shall give to the tenant or licensee leave to contest the application if the affidavit filed by the tenant or licensee discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the premises on the ground specified in Section 22 or 23 or 24;

(c) Where leave is granted to the tenant or licensee to contest the application, the Competent Authority shall commence the hearing of the application as early as practicable and shall, as far as possible, proceed with the hearing from day to day, and decide the same, as far as may be, within six months of the order granting of such leave to contest the application.

(13) 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 statutory the consequences as well laying down that in default of his appearance pursuant to the summons or obtaining such leave, by filing an application for the purpose within the stipulated period, the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant or licensee, as the case may be, and the applicant shall be entitled to an order for eviction on the ground so stated by him in his application for eviction. It is only when leave has been sought for and obtained in the manner stipulated in the statute that an hearing is envisaged to be commenced and completed once again within the stipulated time. The net result of an application/affidavit with grounds of defence and leave to contest, not having been filed within the time as has been stipulated in the statute itself as a condition precedent for the Competent Authority to proceed further to enquire into the merits of the defence, the Competent Authority is obliged, under the constraining influence of the compulsion statutory cast upon it, to pass orders of eviction in the manner envisaged in Clause (a) of Sub-section (4) of Section 43 of the Act.

39. In case of Surendra B. Agarwal (*supra*), the learned Single Judge has considered the provisions of Maharashtra Rent Act and has observed in paragraphs 10 to 13 as under:

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 u/s 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 (licensor) 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-obstinate 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 u/s 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 12 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 u/s 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 u/s 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 u/s 24 of the said Act the Competent Authority cannot decide the issue of title.

13. In the case of *Rajendra B. Nair Vs. Suresh D. Dyanmothe and Another*, this Court was dealing with an identical provision viz.; section 13-A2 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 u/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 section 13-A2 have effect, notwithstanding anything contained in the Rent Act. A licensee cannot claim an immunity from the obligation cast upon him by section 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 u/s 24 of the said Act. Therefore, the revisional Authority has committed a gross error by directing that the Competent Authority cannot proceed with application u/s 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.

40. I have already considered the decision of the Apex Court in case of Precision Steel & Engineering Works (*supra*) in detail. In paragraph 9, the Apex Court considered the scheme of the Delhi Rent Act as also the statutes in other states. It was observed that what would the Court expect the landlord to prove before he seeks to recover possession from the tenant on the ground that he bonafide requires possession for his own use or for the use of the members of his family. In a catena of decisions it has been decided that in order to succeed the landlord should show that the premises have been let out as a residence or for residential purposes; that the landlord needs to occupy the premises which may imply that either he has got no other accommodation in the city or town in which the premises in question are situated or the one in his possession does not provide him a suitable residence and he is required to shift to the premises in question; that his need is genuine and that it is not merely a fanciful desire of an affluent landlord who for the fancy of changing the premises would like to shift to the one from which the tenant is sought to be evicted; that he is acting bona fide in approaching the court for recovery of possession; and that his demand is reasonable. These facts have to be proved to the satisfaction of the court. Certain States have in their respective legislations also imposed an additional condition before the landlord can obtain possession for personal requirement namely before making a decree or order of eviction the court must weigh the relative hardship of the landlord and the tenant and if greater hardship is likely to be caused to tenant, the court is under an obligation to refuse to pass the decree notwithstanding the fact that landlord has proved his requirement.

41. In paragraph 10, the Apex Court observed that the limited jurisdiction which the Controller enjoys is prescribed within the well defined limits and he cannot

get into a sort of a trial by affidavits preferring one set to the other and thus concluding the trial without holding the trial itself.

42. In paragraph 11, it was observed that upon a true construction of proviso (e) to section 14(1) it would unmistakably appear that the burden is on the landlord to satisfy the Controller that the premises of which possession is sought is; (i) let for residential purposes; and (ii) possession of the premises is required bona fide by the landlord for occupation as residence for himself or for any member of his family etc. and (iii) that the landlord or the person for whose benefit possession is sought has no other reasonably suitable residential accommodation. This burden, landlord is required to discharge before the Controller gets jurisdiction to make an order for eviction.

43. In paragraph 12, the Apex Court observed that on a combined reading of section 14(1) proviso (e) with section 25B(1) and (4) the legal position that emerges is that on a proper application being made in the prescribed manner which is required to be supported by an affidavit, unless the tenant obtains leave to defend as contemplated by sub-sections (4) and (5) of section 25B, the tenant is deemed to have admitted all the averments made in the petition filed by the landlord. But what happens if the tenant appears pursuant to the summons issued under sub-sec(2) of section 25B, files an affidavit stating the grounds on which he seeks to contest the application. On perusing the affidavit filed by the tenant and the reply if any filed by landlord, the Controller has to pose to himself the only question: Does the affidavit disclose, not prove, facts as would disentitle the landlord from obtaining an order for the recovery of possession on the ground specified in Clause (e) of the proviso to section 14(1). The Controller is not to record a finding on disputed questions of facts or his preference of one set of affidavits against other set of affidavits. It is immaterial that facts alleged and disclosed are controverted by the landlord because the stage of proof is yet to come. It is distinctly possible that a tenant may fail to make good the defence raised by him. Plausibility of the defence raised and proof of the same are materially different from each other and one cannot bring in the concept of proof at the stage when plausibility has to be shown. It was further observed that the regular trial required to be held by a Court of Small Causes as contemplated by sub-section (6) read with sub-section (7) of section 25B is not to be substituted by affidavits and counter-affidavits.

44. In paragraph 18, the Apex Court observed that while examining the affidavit of the tenant filed under s. 25B(4), it is not the stage of proof of facts, it is only a stage of disclosure of facts. The decision of the Apex Court in case of Precision Steel & Engineering Works (supra) was considered subsequently in the case of Indrajeet Kaur (supra).

45. Insofar as the provisions of Delhi Rent Control Act are concerned, Chapter III is entitled "Control of Eviction of Tenants". Section 14 thereof provides that landlord may make application to the Controller against a tenant for recovery of possession of premises on one or more of the grounds specified therein.

46. Section 14A provides for right to recover immediate possession of premises to accrue to certain persons. Chapter IIIA is entitled "Summary Trial of Certain Applications." Section 25A thereof lays down the provisions of that Chapter or any rule 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.

47. Section 25B lays down that every application by a landlord for the recovery of possession of any premises on the ground specified in clause (e) of the proviso to sub-section (1) of section 14, or u/s 14A, shall be dealt with in accordance with the procedure specified in that section. Sub-section (8) thereof lays down that no appeal or second appeal shall lie against an order for the recovery of possession of any premises made by the Controller in accordance with the procedure specified in that section. The High Court may, for the purpose of satisfying itself that an order made by the Controller under that section is according to law, call for the records of the case and pass such order in respect thereto as it thinks fit. Sub-section 10 lays down that save as otherwise provided in that Chapter, the procedure for the disposal of an application for eviction on the ground specified in clause (e) of the proviso to sub-section (1) of section 14, or u/s 14A, shall be the same as the procedure for the disposal of applications by Controllers.

48. Comparison of provisions of Maharashtra Rent Act and Delhi Rent Act shows that provisions like sub-section (3) and explanation (b) for the purpose of section 24 of the Maharashtra Rent Act are not there in the Delhi Rent Act. Section 24(3) lays down that the Competent Authority shall not entertain any claim of whatever nature from any other person who is not licensee according to the agreement of licence. Explanation (b) for the purpose of section 24 provides that an agreement of licence in writing shall be conclusive evidence of fact stated therein. Such provision is not there in the Delhi Rent Act. That apart, the ratio laid down by the Apex Court in the cases of Precision Steel & Engineering Works & Indrajeet Kaur (supra) will apply to the eviction proceedings under sections 15 & 16 that are to be tried by the Court specified in section 33 of the Maharashtra Rent Act. For deciding the proceedings under sections 15 & 16 of the Maharashtra Rent Act, the regular trial is required to be conducted and explanation (b) to section 24 and provisions of Chapter VIII are not applicable to such proceedings. The proceedings under Chapter VIII are to be tried by the Competent Authority keeping in mind provisions of section 24 and Chapter VIII viz. sections 39, 41 to 44 and 47 of the Maharashtra Rent Act and not by the Court specified by section 33.

49. In the light of the aforesaid discussion, I do not find any merit in the submissions of Mr. Dhakephalkar. The orders passed by the Competent Authority and the Commissioner do not suffer from any infirmity.

50. Mr. Dhakephalkar made serious grievance against the order dated 06/03/2010 passed by the Competent Authority. He submitted that the said

order was passed without issuing the notice to the petitioner as also without hearing the petitioner. The said order is also in the teeth of section 45 of the Maharashtra Rent Act.

Section 45 of the Maharashtra Rent Act reads as under:

Effect of refusal of failure to comply with order of eviction---If any person refuses or fails to comply with the order of eviction made u/s 43 within thirty days of the date on which it has become final, the Competent Authority or any other officer duly authorised by the Competent Authority in his behalf, may evict that person from, and take possession of, the premises and deliver the same to the landlord and for that purpose, use such force as may be necessary.

51. It is not in dispute that the Commissioner decided revision application filed by the petitioners on 05/03/2010. The Commissioner while dismissing revision application preferred by the petitioners directed the Competent Authority to execute order immediately. In pursuance thereof, the respondents filed Misc. Application No. 10 of 2010 on the very next day i.e. 06/03/2010. On the same day, the Competent Authority ordered issuance of possession warrant and the respondents No. 4 & 5 executed warrant of possession and obtained possession on 08/03/2010.

52. In view of section 45 of the Maharashtra Rent Act extracted hereinabove, in my opinion, the Competent Authority committed serious error in issuing warrant of possession on 06/03/2010. Though the Commissioner directed the Competent Authority to execute order immediately, it cannot issue warrant of possession contrary to section 45. In my opinion, the Competent Authority ought to have satisfied itself in terms of section 45 of the Maharashtra Rent Act whether the eviction order had become final and thereafter only issued warrant of possession. Respondents No. 4 & 5 also committed grave error in filing application on the very next day of passing of the order by the Commissioner and executing warrant of possession on the basis of the order passed by the Competent Authority. The Competent Authority failed to appreciate that section 45 will become applicable only in the event if any person refusing or failing to comply with order of the eviction made u/s 43 "within 30 days of the date on which it becomes final.

53. The next question is to what relief the petitioners are entitled to. I have already upheld the orders passed by the Competent Authority and the Commissioner. At the same time, the Competent Authority clearly acted in excess of its jurisdiction while issuing warrant of possession on 06/03/2010. Respondents No. 4 & 5 have also obtained possession in the teeth of section 45 of the Act. Though the petitioners are not entitled to possession of the suit premises, they are required to be compensated in that respect. Respondents No. 4 & 5 shall pay Rs. 2,00,000/- (Rs. Two lacs), being at a double rate of monthly compensation of Rs. 1 lac in that regard. Hence, Writ Petition succeeds partly and is disposed of as under:

i) The impugned judgment and orders (a) dated 14/07/2008 rejecting the application made by the petitioners for leave to defend (b) dated 14/07/2008 rejecting the Intervenor's Application dated 11/07/2008 filed by Mr. Nirav Modi (c) dated 14/07/2008 passed by the Competent Authority (d) dated 05/03/2010 passed by the Additional Commissioner are upheld.

ii) Respondents No. 4 & 5 are directed to pay Rs. 2,00,000/- to the petitioners for taking possession in contravention of section 45 of the Maharashtra Rent Act. The said amount shall be given due credit from the payment which is required to be made by the petitioners to respondents No. 4 & 5.

54. In view of disposal of the Writ Petition, Civil Applications Nos. 2184 of 2010, 2493 of 2010 and 2494 of 2010 do not survive and the same are disposed of accordingly. Rule is partly made absolute in the aforesaid terms with no order as to costs.