

(2008) 06 BOM CK 0154

In the Bombay High Court

Case No : Writ Petition No. 2810 of 2008

Shakeel Ahmed Fateh Mohd. Sundke

APPELLANT

Vs

Aziz Ahmed Khan

RESPONDENT

Date of Decision : 18-06-2008

Acts Referred:

Bombay Rent Act, 1947 — Section 13A(2)
Civil Procedure Code, 1908 (CPC) — Order 20 Rule 1
Constitution of India, 1950 — Article 21, 227
Maharashtra Rent Control Act, 1999 — Section 24, 24(3), 42, 55(2)

Citation : (2008) 6 BomCR 333 : (2008) 6 MhLj 418

Hon'ble Judges : A.A. Sayed, J

Bench : Single Bench

Advocate : G.S. Godbole, for the Appellant; P.K. Dhakephalkar, instructed by Sanjeev A. Sawant, for the Respondent

Final Decision : Dismissed

Judgement

A.A. Sayed, J.—Rule. By consent rule is made returnable forthwith and heard finally.

2. This petition is directed against the judgment and order dated 13-3-2008 passed by the Additional Commissioner, Pune Division, Pune, in a Revision Application filed by the petitioner against the order dated 4-3-2006 passed by the Competent Authority, directing the petitioner to vacate the flat in question and pay damages, which Revision Application came to be rejected.

3. The flat in question is Flat No. 1, Ground Floor, S.Y. Hilltop Plot No. 98, Kauser Bagh Co-op. Hsg. Society Ltd., Kondhwa Khurd, Pune 411048 ("the said flat" for short) which is held by the Respondent on ownership basis. The petitioner was inducted in the said flat on the basis of a leave and license agreement some time in the year 1998. The eviction of the petitioner is sought on the basis of another agreement of leave and license dated 1-7-2004 between the same parties under the provisions of Maharashtra Rent Control Act 1999 ("the said Act" for short),

for which an Application was filed before the Competent Authority u/s 42 of the said Act. The period of license under the agreement was 11 months and the license fee was Rs. 2500/-. The respondent opposed the Application by filing his reply. The petitioner was granted leave to defend the application. After hearing both the parties finally, the Competent Authority was pleased to pass an order directing the petitioner to vacate the said flat and also directing the petitioner to pay damages of Rs. 5,000/- per month from 1-6-2005 till actual delivery of possession.

Aggrieved by the aforesaid order of the Competent Authority, the petitioner filed a Revision Application before the Additional Commissioner, Pune Division, Pune, ("Revisional Authority" for short), which came to be dismissed by the impugned order; hence this petition.

4. The learned Counsel for the petitioner, at the outset, took exception to the fact that the impugned order was passed by the Revisional Authority after lapse of almost 5 months from 18-10-2007, when the matter was reserved for judgment. Learned Counsel for the petitioner pointed out that on 18-10-2007 when the matter was kept for arguments, the petitioner filed an application for adjournment in the said Revision Application, as the advocate for the petitioner was in personal difficulty and had gone to Nandurbar. The said application, however, was rejected by the Revisional Authority and the matter was reserved for judgment. It is submitted that no opportunity was given to the advocate for the petitioner to argue the matter and there was no justification for the Revisional Authority to show haste in closing the case, when for about five months thereafter, the judgment and order was not pronounced by the Revisional Authority. The learned Counsel for the petitioner submitted that after lapse of almost five months, there was every likelihood that the Revisional Authority would have not remembered the matter inasmuch as the matter was not fresh in his mind and that even the written arguments which were filed on 18-10-2007, has not been taken into consideration while passing the impugned order. The learned Counsel submitted that the impugned order is a four page order and all pleas raised by the petitioner have not been dealt with in the impugned order. He therefore urged that the matter be remanded to the Revisional Authority to decide the matter afresh after hearing the Counsel for the parties.

5. The learned Counsel for the petitioner relied upon a decision in case of Anil Rai v. State of Bihar reported in , wherein the Honourable Apex Court has observed thus-

The inordinate, unexplained and negligent delay in pronouncing the judgment is alleged to have actually negated the right of appeal conferred upon the convicts under the provisions of the Code of Criminal Procedure. It is submitted that such a delay is not only against the provisions of law but in fact infringes the right of personal liberty guaranteed by Article 21 of the Constitution of India. Any procedure or course of action which does not ensure a reasonable quick adjudication has been termed to be unjust. Such a course is stated to be

contrary to the maxim *actus curiae neminem gravabit*, that an act of the Court shall prejudice none.

He, therefore, submitted that applying the principle laid down in the aforesaid decision by the Honourable Apex Court it is necessary that the pronouncement of judgment should be without delay and that the judgment should be pronounced within a reasonable time of the closing of the hearing of the case. The learned Counsel has taken me through the relevant portions in the said judgment, particularly, paragraphs 8 and 10 of the said judgment, wherein it is observed that the judgment should be pronounced within two months after conclusion of trial and guidelines have been laid down by the Honourable Apex Court in relation to pronouncement of judgments.

6. The learned Counsel has also placed reliance on a decision in case of *R.C. Sharma Vs. Union of India (UOI) and Others*, . He has invited my attention to paragraph No. 12 in the judgment, which reads thus-

12. ...nevertheless, we think that an unreasonable delay between hearing of arguments and delivery of a judgment, unless explained by exceptional or extraordinary circumstances, is highly undesirable even when written arguments are submitted. It is not unlikely that some points which the litigant considers important may have escaped notice. But what is more important is that litigants must have complete confidence in the result of the litigation. This confidence tends to be shaken if there is excessive delay between hearing of arguments and delivery of judgments. Justice, as we have often observed, must not only be done but must manifestly appear to be done.

7. Placing reliance on the aforesaid judgments, the learned Counsel urged that the matter is required to be remanded to the Revisional Authority so that arguments of the petitioner can be considered and the matter is decided afresh.

8. The learned Sr. Counsel for the respondent, on the other hand, insofar as the Question of remand is concerned, submitted that delay in pronouncement of judgment could not be a reason for remanding the matter to the Revisional Authority. He submitted that the Revisional Authority in the impugned order has dealt with all aspects of the matter which he was required to deal with. He submitted that merely because the judgment is not elaborate would not necessarily mean that the Revisional Commissioner has not applied his mind in the matter. The learned Sr. Counsel for the Respondent submitted that several dates and opportunities were given to the petitioner and the plea of remand is taken only to prolong the handing over the possession of the said flat to the respondent. The learned Sr. Counsel has taken me through the impugned order, wherein in paragraph 2, the Revisional Authority has observed thus:

2. The present revision application was filed on 3-6-2006 and it was heard from time to time thereafter. Though the revision applicant was interested in staying the execution of the order of the competent authority under challenge, a number of adjournments were sought by the pleader for the applicant on health ground.

There was a caveat application filed by the opponent as well. As a result, it was decided that the matter should be heard on merits only, to avoid further delay of the proceedings. Though an ultimatum was given to the applicant to argue his case on 27-9-2007, his pleader failed to appear and argue before me on 18-10-2007, as already directed. Hence, I had to proceed ex parte against the applicant and hear the pleader for the opponent on 18-10-2007. The Ctnatter was reserved for orders thereafter.

9. The Learned Sr. Counsel for the respondent has also invited my attention to the following words in the impugned order- "I have carefully gone through the revisional application, various documents filed by the revision-applicant as well as the contentions raised on behalf of the opponent in this matter..." and submitted that the Revisional Authority has only thereafter arrived at its conclusion. He further submitted that the Revisional Authority has perused the material on record and considered the admission by the respondent in his cross-examination that the agreement in question is a leave and license agreement and the contentions of the petitioner were rejected by him and it cannot be said that the Revisional Authority has not applied his mind. The learned Sr. Counsel for the respondent also taken me through the copy of the Roznama annexed to the petition, which discloses that the petitioner has time and again made applications for adjournments. He therefore submitted that the impugned order does not require to be remanded, as suggested by the petitioner.

10. I have considered the rival contentions of the parties. Insofar as the plea of remand of the matter is concerned, merely because there has been delay in pronouncement of the judgment would not mean that the Revision Application is required to be remanded. I find that the Revisional Authority has considered all aspects of the matter and has perused the material placed before the Competent Authority and also other material as is recorded in the impugned order, and has arrived at its findings and it cannot be said that the Revisional Authority has mechanically passed the impugned order. That apart, even looking to the conduct of the petitioner in seeking repeated adjournments before the Revisional Authority merely to delay the hearing would itself disentitle him to seek remand of the matter which would only result in further delay of handing over possession of the said flat to the respondent, when, even on merits as discussed in the latter part of this judgment, no case has been made out by the petitioner to interfere with the impugned order. It is to be kept in mind that the object and purpose of the legislature in introducing the provisions relating to leave and license agreements in the Rent Act, was for a summary disposal of such matters for which a separate forum has been established. It is also noted that the written arguments of the petitioner are also dated 18-10-2007 and were apparently kept ready to be filed on that day, when the application for adjournment refused and the matter closed for judgment.

11. Insofar as the judgments cited by the learned Counsel for the petitioner is concerned, it is noted that in Anil Rai's case (supra), the proceedings before the

Honourable Apex Court were under the Criminal Law and the Honourable Apex Court was dealing with an Appeal involving personal liberty and fundamental rights of the Appellant under Chapter III of the Constitution of India. In fact in both the decisions viz. Anil Rai's case (supra) and R.C. Sharma's case (supra) cited by the learned Counsel for the petitioner the Honourable Apex Court has upheld the impugned orders despite the delay in pronouncement of judgment. Hence, the decisions cited are of no assistance to the petitioner insofar as the prayer for remand of the matter to the Revisional Authority is concerned.

12. There can be no two opinions that delay between hearing of arguments and delivering of judgments should be avoided. It is always desirable that judgments are pronounced immediately. However that may not always be practicable and in many a cases, judgments are even reserved so as to save the time of the Court to hear other matters. It is to be noted that both the decisions cited by the learned Counsel for the petitioner are of the period prior to the amendment of CPC of 2002. By the CPC (Amendment) Act, 2002, it is now provided under Order XX, Rule 1 that the Court is required to make every endeavour to pronounce the judgment within thirty days from the date of conclusion of the hearing of the case and in exceptional and extraordinary circumstances such day shall not ordinarily be a day beyond sixty days. The Code does not speak of what is to happen in the event there is a delay of more than sixty days. The use of the words "ordinarily" in Order XX, Rule 1, however, do indicate that in "exceptional and extra ordinary" cases this period can be extended and the proviso is not mandatory, but directory.

13. In any litigation, the party who is unsuccessful is always aggrieved. However, the parties cannot and should not be permitted to take advantage of the fact that there has been a delay in the pronouncement of judgment, unless the party aggrieved shows grave prejudice to have been caused to him as a result of the delay. In a given case, it is likely that prejudice may have been caused and this could form an additional ground or even a sole ground of challenge to the impugned judgment which is not pronounced within the 30 days or extended period of 60 days. This would entirely depend on the facts and circumstances of each case. In fact, if any grave prejudice was being caused to either of the parties as a result of the delay in pronouncement of judgment, it would be even open for them to move the Court by way of an application, as was provided in the guidelines in the case of Anil Rai (supra), praying for an early judgment.

14. In the instant case, I do not find any prejudice having been caused to the petitioner as a result of the delay in pronouncement of the judgment. Neither do I find that the judgment has been passed only mechanically and without any application of mind as a result of the delay. Pertinently in the present case, in the absence of any oral arguments being canvassed, it cannot even be contended that any submission on behalf of the petitioner was apparently forgotten to be considered by the Revisional Authority due to passage of time. Even otherwise, as is discussed later, the Revisional Authority was in fact not required to deal

with all issues raised by the petitioner inasmuch as the execution and registration of the leave and license agreement is not denied and in view of the fact that Section 24 of the Maharashtra Rent Control Act, 1999, specifically provides that the leave and license agreement shall be conclusive evidence of the facts stated therein.

In this view of the matter, I am not inclined to remand the matter to the Revisional Authority to consider the matter afresh. The prayer in that behalf is, therefore, reflected .

15. Now coming to the merits of the petition, the learned Counsel for the petitioner submitted that it is an admitted fact that between 1999 and July 2002, there was no agreement executed between the parties. It is submitted that the intention of the Respondent was to let out the said flat, however, no issue was framed regarding the nature of the agreement i.e. whether it was a licence or a lease agreement. The learned Counsel further submitted that relation between the parties is not that of licensor and licensee and that the respondent had also agreed to sell the said flat to the petitioner's wife. The learned Counsel further pointed out that even the stamp-paper is dated 23-7-2004, whereas the agreement is shown to have been executed earlier i.e. on 1-7-2004 and thus the genuinity of the leave and license agreement is itself doubtful. It is also contended that as the petitioner was already in possession of the said flat ingredients of Section 24 of the Rent Control Act would not be attracted inasmuch as it is not disputed that the possession of the suit premises was with the petitioner prior to the execution of the leave and licence agreement dated 1-7-2004, on the basis of which agreement, eviction is sought by the respondent under the said Act. The learned Counsel for the petitioner also pointed out that the wife of the petitioner has also filed Special Civil Suit being Suit No. 268 of 2006, for specific performance of the agreement for sale of the said flat. He further brought to the notice of the Court that the temporary injunction application at Exhibit 5 in that suit was rejected by the Trial Court and the petitioner has filed an Appeal against the said Order.

16. Per contra, the learned Sr. Counsel for the respondent, has taken me through Section 24 of the Rent Control Act and submitted that admittedly the period of licence has expired and once that is so, order of eviction has to follow. He laid emphasis on the use of word "shall" in the said Section which according to him indicates that once having satisfied himself that the period of licence is over and failure by the licensee to deliver possession, the Competent Authority would have no option but to order eviction of the licensee. The learned Sr. Counsel for the respondent invited my attention to Section 24(3)(b) of the Rent Control Act, which provides that the agreement of license in writing shall be "conclusive evidence" of the facts stated therein and the petitioner cannot be allowed to contend anything else, particularly, when admittedly the leave and license agreement has been executed by the parties and the same is a registered document. The learned Sr. Counsel for the respondent has relied upon a decision

in case of *M/s. Sails India Vs. Mrs. Rita M. Rupani*, wherein the expression "conclusive evidence" has been interpreted. The learned Sr. Counsel has taken me through the observations in para No. 9 and 10 of the said judgment wherein the Single Judge of this Court has held thus-

the explanation (b) occurring in Section 13A(2) which provides that for the purposes of this Section an agreement of licence in writing shall be conclusive evidence of the fact stated therein is unambiguous in its term and makes it clear that an agreement of license in writing proves conclusively all facts stated therein. When an agreement of license which is in writing is made conclusive evidence of the facts stated therein, obviously the legislature has not intended to permit any other evidence to be led by the parties to disprove the facts stated in written agreement of licence.

It is to be noted that Section 13A(2) of the old Rent Act viz. Bombay Rent Act, 1947 which was applicable to that case at the relevant time is *pari material* (barring the first part of the explanation) with Section 24 of the present Rent Act viz. Maharashtra Rent Control Act, 1999.

17. The learned Sr. Counsel for the respondent has taken me through the order of the Competent Authority as well as the impugned order of the Revisional Authority and also referred to the Special Civil Suit filed by the wife of the petitioner and submitted that the petitioner being an advocate was very much aware of the terms and conditions of the leave and licence agreement and no interference is called for in the impugned order by this Court in exercise of its supervisory writ jurisdiction, when both the Authorities below have held against the petitioner.

18. I have heard the rival contentions of the parties and have gone through the impugned order of the Revisional Authority as well as the Competent Authority as also other material placed before me. The agreement of leave and licence is admittedly a registered document. Though the stamp paper used for execution of the agreement is of later date, the execution of the agreement is admitted by the petitioner. The contention of the petitioner, who is an Advocate, that he has signed the agreement against his will is rather curious, and was also rightly rejected by the Authorities below. The document undisputedly carries the photograph and signatures of the petitioner which are taken at the time of registration of the agreement.

19. It is to be noted that the defence which was raised by the petitioner in his written statement was that the intention of the parties was to create lease. However, later on the plea of intention of sale of the flat and/or agreement of sale was also raised. This plea of intention of sale of the said flat was clearly an afterthought and has been pressed in service for the first time before the Revisional Authority and does not find place in written statement of the petitioner. It is noted that the suit by the wife of the petitioner for specific performance of agreement for sale of the said flat was filed in February, 2006, a

few days prior to the decision of the Competent Authority. Pertinently, when the application for injunction was moved before the Civil Court, in the said suit filed by the wife of the petitioner, the agreement of leave and licence was not disclosed. While rejecting the application and prayer for temporary injunction, the Trial Judge in that suit in its order dated 21-3-2008 has observed as follows:

...This suit is filed on 15th February 2006, few days prior to decision of Application No. 18/2005. This fact shows that plaintiff did not come before this Court with clean hands and she has suppressed material facts from the Court. Moreover, the alleged documents are of the year 2002 and why the plaintiff kept mum for near about 4 years is not explained by the plaintiff. There is some force in the submission of the Counsel for the defendant that to defeat the order passed by the Competent Authority, this suit is filed....

20. Insofar the decision in the case of Sails India (supra) cited by the learned Sr. Counsel for the respondent is concerned, I find myself in respectful agreement with the views of the learned Single Judge of this Court that the agreement of leave and license in writing is conclusive proof of the facts stated therein and no other evidence can be led to prove otherwise. Thus, once it is established that the agreement of leave and license is in writing, the Courts cannot look into the intention of the parties and if the period of license has expired, the Competent Authority is statutorily obliged to pass an order for eviction on an application made to it under the provisions of the Maharashtra Rent Control Act, 1999, and on failure to vacate, the licensee shall be liable to pay double the rate of license fees. The principles are clearly applicable to the facts in the present case. Section 24(3)(b) of the Maharashtra Rent Control Act, 1999, has of course to be read with Section 55(2) of the said Act, which requires the leave and license agreement to be registered, else the contention of the tenant of the terms and conditions prevails, unless proved otherwise. In the instant case, the agreement is admittedly a registered document, therefore, there can be no question of looking beyond the terms of the agreement or proving otherwise. The said agreement is therefore conclusive evidence of the facts stated therein. Once the execution of the Agreement is admitted, the plea that Section 24 of the said Act is not attracted in the present case in view of the fact that the petitioner was in possession of the said flat prior to the execution of the agreement of leave and license, is of no consequence and without substance and is rightly rejected by the Authorities below. In fact, the impugned order also refers to Clause 10 of the Agreement which specifically states that "nothing in this Agreement shall be deemed to grant a lease or tenancy....

In view of the aforesaid discussion, I find that the impugned order does not warrant any interference so as to set aside the same in exercise of writ jurisdiction of this Court under Article 227 of the Constitution of India.

21. In the result, the petition is dismissed with cost, quantified at Rs. 5000/-, to be paid by the petitioner to the Respondent within three weeks from the date of this order. Rule to stand discharged.

22. At this stage, the learned Counsel for the petitioner seeks time of three months to enable the petitioner to move the Hon''ble Apex Court. The prayer is opposed by the learned Counsel for the respondent. However, in the interest of justice, I direct that the impugned order shall not be executed for six weeks provided the petitioner deposits entire balance arrears of compensation and damages which comes to Rs. 1,30,000/- (as informed by the Counsel for the parties), within a period of three weeks from today. The petitioner shall also file usual undertaking before this Court within three weeks from today inter alia stating that in absence of any order that may be passed by the Hon''ble Apex Court, the petitioner shall handover vacant and peaceful possession of the suit premises to the respondent on expiry of six weeks from the date of this order.

On depositing the aforesaid amount by the petitioner including the amount of Rs. 50,000/- deposited earlier, the respondent is permitted to withdraw the same, after a period of six weeks from today.

23. The Registrar Judicial (I) to call for an explanation from the Revisional Authority for the delay in the pronouncement of the impugned order.