



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10522 OF 2011

Mr. Clifford Anthony Falcon
(at present residing at ; Dubai U.A.E.)
Through his Constituted Attorney
Mr. Prashant Bhagwan Saudagar,
Residing at: Room no.14,
Bori Chawl, Brahman Wadi, Opp. Novelty Cinema,
Grant Road, Mumbai-400 007

.. Petitioner

VERSUS

Mr. Parthasarathy Srinivasan Pillai
(Since deceased through his legal heirs and
Representatives)

1A. Anish P. Pillai (son)
Age: 48 yrs, Occ: unknown
Residing at : Flat No. 502, Evershine Nagar
Malad (West), Mumbai 400 064

1B. Anitra Pillai Patel (daughter)
Age:45 yrs. Occ: unknown
Residing at : Flat No. 81, 8th Floor,
B- Wing, Rustamjee Rivera, Marve Road,
Near Orlem Church, Orlem, Malad (West)
Mumbai -400 064.

2. M/s Pillai & Peter Associates,
Pvt. Ld., a Company incorporated
under Companies Act, 1956 having its
address at Flat No.302, 3rd Floor,
Germaine Apartment, Gautam Buddha Road,
Opposite Orlem Church Orlem Malad (West),
Mumbai - 400 064.

Now Residing at Flat No 81, 8th floor
B-wing, Rustomjee Rivera, Marve Road,
Near Orlem Church, Orlem Malad (West),
Mumbai-400 064.

..Respondents

SNEHA
NITIN
CHAVAN

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by SNEHA
NITIN CHAVAN
Date: 2026.04.15
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Appearance as on 10/12/2025

Mr. Nachiket V. Khaladkar for the Petitioner.

None for the Respondents.

Appearance as on 15/04/2026

Mr. Nachiket V. Khaladkar for the Petitioner.

None for the Respondents.

CORAM : M. M. SATHAYE, J.

RESERVED ON : 10th DECEMBER 2025

PRONOUNCED ON : 15th APRIL 2026

JUDGMENT :

1. Petitioner is taking exception to judgment and order dated 29/10/2011 passed by Additional Commissioner, Konkan Division, Mumbai in Revision Application No. 477 of 2010, by this petition under Article 227 of the Constitution of India. Petitioner is licensor and Respondents are licensees. By the said impugned order, revision filed under section 44 of Maharashtra Rent Control Act, 1999 ('MRC Act' for short) is allowed, thereby setting aside judgment and order dated 18/06/2010 passed by Competent Authority (Rent Act), Konkan Division Mumbai in Case No. 84 of 2008. Under impugned order, possession of suit premises is directed to be restored to licensee - Respondent No. 1 (Mr. P. S. Pillai).

2. Flat No. 302, 3rd floor, Germaine Apartments, Gautam Buddha Road Orlem Church, Orlem Road, Malad (West), Mumbai is the subject matter



property, hereinafter referred to as 'the suit-flat' for short.

3. The Petitioner filed application under section 24 of MRC Act, contending inter alia as under. That he is a licensor and Respondents are licensees. That the Petitioner is sole and absolute owner of the suit-flat. That on 18/03/1997, the Respondent No. 2 through Respondent No. 1 was inducted as licensee for 11 months in the suit flat. That amount of Rs.1,00,000/- was paid as interest free security deposit and Rs.5,250/- was agreed as monthly compensation. That after expiry of license, the Respondents failed to vacate the suit flat. That since the Petitioner was residing out of India due to his employment, he was contacting Respondent No. 1 on telephone informing that Petitioner intends to return to India permanently and requires the suit flat for personal occupation. That on 13/03/2008, the Petitioner issued a letter requesting Respondents to vacate the suit flat. That on 05/04/2008, Respondents sent a reply raising false and frivolous grounds. That the Petitioner sent letter dated 17/06/2008 dealing with the reply. That on 04/05/2008, the Petitioner visited the suit flat alongwith his family and requested Respondent No. 1 to vacate; however Respondent No. 1 and his family members abused and threatened the Petitioner. So a complaint was lodged with police. That therefore, the Petitioner filed Case No. 84 of 2008, seeking eviction of Respondents



alongwith damages from February, 1998.

4. Leave to defend was granted to Respondents and they filed written statement contending *inter alia* that Respondents are tenants. Licensor - licensee relationship is denied. Leave and license agreement dated 18/03/1997 is denied and the Respondents claimed no re-collection about it. Payment of security deposit is also denied. It is contented that the leave and license agreement is un-registered and not properly stamped. That since there is no licensor-licensee relationship, the Court has no jurisdiction. That inspection of original agreement is not given. That Respondent No. 2-company has received show-cause notice as to why it should not be dissolved and Respondent No. 2 stands dissolved as a defunct company. That there is negligence on the part of Petitioner making claim of possession and the claim is belated by more than 10 ½ years and therefore barred by law of limitation. That Petitioner and his family is permanently residing at UAE. That suit-flat was leased to Respondents in the year 1994 when Petitioner was not on good terms with his wife Smt. Nirmala. That marriage of Petitioner with Smt. Nirmala was dissolved. That Respondent No. 1 was not having sufficient funds to purchase the suit-flat, however, the Petitioner suggested Respondent No. 1 to take the suit flat on lease and agreed that subsequently Respondent No. 1 would have the option of purchasing the



same for mutually agreed consideration. That therefore the Respondents have paid huge premium and agreed to pay rent of Rs.5250/- per month. That after occupying the suit flat, Respondent No. 1 has carried out substantial repairs, renovation and improvement. That since Petitioner stopped accepting rent though Respondent No. 1 was ready and willing to pay. That Respondent No. 1 has approached Petitioner many times for settlement; however, the Petitioner has not responded. On these grounds Respondents prayed for dismissal of the case.

5. The learned Competent Authority (Rent Act), Konkan Division, Mumbai who heard and tried the said case, allowed the same, by order dated 18/06/2010, thereby directing Respondents to hand over vacant and peaceful possession of suit-flat to the Petitioner. The Competent Authority also directed Respondents to pay damages to the Petitioner @ Rs.10,500/- per month from February, 1998 till hand-over of possession.

6. The Respondent No. 1 alone filed Revision Application No. MRCA/REV/477 of 2010 challenging the eviction order.

7. The learned Additional Commissioner, Konkan Division Mumbai, by impugned order dated 29/10/2011 allowed the said revision, setting aside the order of the competent authority, thereby directing the Petitioner to



restore possession to Respondent No. 1, which was taken in execution in the meantime.

8. In these circumstances present petition is filed. On 16/01/2012, the Petition was admitted. Impugned order was stayed. As such, since eviction order was already executed, presently Petitioner/licensor is in possession of the suit-flat.

9. The Respondent No. 1 has filed affidavit-in-reply to this petition affirmed on 19/12/2011. In paragraph 4, the Respondent No. 1 has admitted that in the meantime, the Petitioner has obtained possession of the suit premises.

SUBMISSIONS

10. Learned counsel for the Petitioner submitted that Respondents have not filed any suit seeking declaration of tenancy and it is only by way of defence that tenancy is pleaded. He submitted that learned Additional Commissioner, Konkan Division, who is a revisional authority, has exceeded his jurisdiction under Section 44 of the MRC Act. He submitted that the revisional authority has re-appreciated the evidence on record to come to a contrary conclusion about existence of leave and license agreement, which is not permissible. He further submitted that the Competent Authority had



already considered the evidence under Section 24 of MRC Act, coming to proper conclusion of existence of leave and license agreement, which had come to an end being not renewed and by efflux of time. He submitted that the alleged case of lease with option of purchase, is not at all proved and there is no such documentary or oral agreement. That no suit for specific performance is filed by the Respondents.

11. During pendency of the petition, the Petitioner took steps to serve the Respondents through newspaper publication under the order of this Court and therefore this Court proceeded with hearing of the petition on merits.

12. Nobody appeared for the Respondents. Perhaps the reason for non appearance of Respondents lies in the fact that the Respondents have lost possession of the suit flat during pendency of the proceedings. It is clearly seen from clause 3 of the operative part of the impugned order that during pendency of the proceedings the warrant of possession was already executed and the Petitioner had obtained possession.

REASONS AND CONCLUSIONS

13. I have considered the submissions and perused the impugned judgment and order as well as the order by the Competent Authority granting eviction.



14. It is clearly seen from the impugned judgment that till paragraph 8] [a], the Additional commissioner has only reiterated the rival case and contentions. It has weighed with the Additional Commissioner that the Petitioner is residing out of India, who permitted his flat to be occupied by the Respondent No.1 for a long period of time and therefore, the Additional Commissioner has drawn a conclusion that 'it is unbelievable that the Petitioner would not take action for a long period seeking eviction'. It is further seen from paragraph 8][b] to 8][d] that the Additional Commissioner has re-appreciated the evidence and has held that the evidence on record creates suspicion about authenticity of the signatures appearing on the document of leave and license. The Additional commissioner has given importance to the fact that the suit-flat was in possession of the Respondents from 1994 till 1997, when subject matter leave and license agreement (18/03/1997) was executed. The Learned Additional Commissioner has discarded the evidence of P.W.2 – Mr. Parab (who is Committee Member of the Society in which suit-flat is situated) from whose custody, copy of the leave and license agreement is produced. Though it is a fact that the original document of leave and license agreement is not on record, the secondary evidence produced on record was duly considered by the Competent Authority and a conclusion was drawn about its



truthfulness. This has been overturned by the Additional Commissioner under revisional jurisdiction, by comparing signatures, harboring suspicion against the Petitioner about long possession of Respondent No. 1 and not believing the independent witness i.e. Committe Member of the Society. In my view, the Revisional Authority i.e. Additional Commissioner has exceeded his jurisdiction in re-appreciating the evidence and coming to a contrary conclusion.

15. The reasons for holding that Additional Commissioner has exceeded the jurisdiction in re-appreciation of evidence, are as follows.

16. From paragraph Nos. 9 to 16 of the order of Competent Authority (Trial Court) it is seen that Petitioner has relied on a xerox-copy of leave and licence agreement dated 18/03/1997 coupled with Society's record and evidence of P.W.2 - Mr. Parab. The case of Respondents that the Petitioner was apprehending that he may be required to give suit-flat to his wife with whom relations were strained and therefore the Petitioner had offered to sell the suit flat to Respondents, has been found to be completely unbelievable as there was no document or agreement in writing showing such intention for agreement to sell. The the Respondents pleaded that there was a letter sent to the Society mentioning that the suit flat was leased to Respondent No. 1. However, copy of such letter is not produced on record.



P.W.2-Mr. Parab, the committee member of the Society appeared before Competent Authority with all relevant records. The Competent Authority has considered that assuming there are certain oral talks about lease with option to purchase, when there are several agreements, the last agreement will prevail, which in the present case is, leave and license dated 18/03/1997.

17. The Competent Authority has considered case of the Petitioner that there was cordial relationship and the Petitioner has stated in cross-examination that original agreement was with Respondent No. 1 who had obtained it on the pretext of taking xerox copies. The Competent Authority has then considered that since primary evidence is not on record, its secondary evidence will have to be considered. The Competent Authority has considered that at the relevant time (March 1997), leave and licence document was not required to be compulsorily registered. The Competent Authority has further considered that though Respondents pleaded a case of paying huge premium of Rs.5,00,000/- in the year 1994, no evidence in support thereof was given and in cross-examination, Respondent No. 1 stated that he has made a cash payment of Rs.5,00,000/-. The Competent Authority has further considered that Respondent no. 1 has given evasive replies to questions about cash payment and its disclosure in income tax returns and balance sheet.



18. The Competent Authority has further considered that though it is the case of the Respondent No. 1 that he does not recollect having executed the leave and license agreement, a defence was taken that the said document is un-registered. An attempt was made by Respondent no. 1 to show that the document is in between the Petitioner and Respondent No. 2, which is a defunct company no more in existence. The Competent Authority has considered the tenor of the evidence led by Respondent no. 1 and held that it is a futile attempt on the part of Respondent No. 1 to show that he has no connection with Respondent No. 2 company.

19. The Competent Authority has further considered that both the witnesses to the document of leave and license - Mr. Anish Pillai and Hitesh Chheda are not examined by Respondent No. 1 by stating in cross-examination that Mr. Anish Pillai is his son and he is not examining him and Mr. Hitesh Chheda was his employee and he does not know his whereabouts. This aspect of having both the witnesses from the side of Respondents, is duly considered by Competent Authority to conclude that relationship between the parties were cordial.

20. The Competent Authority has thereafter considered the evidence of committee member Mr. Parab as P.W.2. This witness has stated that whenever any member of the Society gives the flat on 'leave and license basis', a copy



of leave and license agreement is submitted to society, which is maintained in a separate file. Copy of leave and license agreement, copy of Appendix 28, application form for nominal membership received by the Society are produced on record. Pursuant to said application, the subject was discussed in Society meeting dated 30/08/1997 and even copy of minute-book is produced on record. The Competent Authority has further considered that Respondent no. 1 was confronted with his signature when he admitted that nominal membership application dated 27/08/1997 was signed by him. The Competent Authority has then considered the said nominal membership form, which also mentioned that the suit-flat was taken on leave and license.

21. The Competent Authority has further considered that if Respondent No. 1 was inducted as 'tenant' in the year 1994, there was no reason for him to sign the nominal membership form in August 1997 stating that suit-flat was taken on 'leave and license'. The Competent Authority has further considered that P.W.2 - Mr. Parab, a committee member has stated that Respondent no. 1 was acting as a Secretary during the period from 2003 to 2006 and 2007 to 2008 and earlier members were not aware that he is a licensee in respect of suit-flat and when members came to know about the status of Respondent No. 1, objection was raised and Respondent No. 1 was required to step down from the post of Secretary.



22. The Competent Authority has also considered the copy of minutes dated 30/08/1997, which also records that application was made for society's NOC for giving the suit flat on leave and licence and discussion took place and thereafter, the application for NOC were approved.

23. After appreciation of all this evidence, the Competent Authority has concluded that Respondent No. 1 is denying execution of leave and license agreement by hook or crook and the case of Respondent no. 1 is not believable and there existed leave and license agreement.

24. The Competent Authority has considered that Respondent no. 1 at the relevant time was in dominant position as a secretary of the Society and therefore, the statement in the reply of Society (Exh.D-5) has not been believed. Though there is a mention in the reply about Petitioner's application-letter dated 19/06/1994 stating that suit flat was 'leased' to Respondent no. 1, copy of that letter dated 19/06/1994 is not on record.

25. In the aforesaid facts and circumstances, in my view, the Competent Authority had considered the evidence on record in proper perspective and had come to the most probable conclusion. The Additional Commissioner (revisional authority) on the basis of suspicion, has come to a contrary conclusion by re-appreciating the evidence, which was beyond the scope of



revisionary powers under Section 44 of MRC Act. Therefore, the reasons on which the impugned order is passed, are found to be perverse.

26. Therefore, this is a fit case to interfere. Accordingly, the petition is allowed. Impugned order dated 29/10/2011 passed by Additional Commissioner, Konkan Division, Mumbai is quashed and set aside. Revision application No. 477 of 2010 is dismissed. The order of eviction dated 18/06/2010 passed by the Competent Authority, Rent Act, Konkan Division, Mumbai in Case No. 84 of 2008 is confirmed.

27. No order as to costs.

28. All concerned to act on duly authenticated or digitally signed copy of this order

(M. M. SATHAYE, J.)