

**Rohit and Another Vs. State of Maharashtra and Another**

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**Court :** Mumbai Aurangabad

**Decided On :** Apr-25-2013

**Judge :** K.U. Chandiwal

**Appeal No. :** Criminal Writ Petition No.682 of 2011

**Appellant :** Rohit and Another

**Respondent :** State of Maharashtra and Another

**Advocate for Def. :** Mr. Bhandari

**Advocate for Pet/Ap. :** Mr. Deshmukh

**Judgement :**

Rule. Rule made returnable forthwith. Heard finally by consent of parties.

2. The petitioners/ landlords of the premises, have sought quashing of proceedings pending before the learned Judicial Magistrate, First Class, Aurangabad being S.C.C. No.9242/2007, initiated by the respondent No.2 for failure to get lease deed agreement registered.

3. The respondent No.2 has taken godown from the petitioners on 1.6.2001 on monthly rent of Rs.1000/-. As per Section 55 of the Maharashtra Rent Control Act, 1999 (hereinafter referred to as the "said Act" for short), a duty is cast on the landlord to get the tenancy document duly registered which is mandatory.

According to respondent, in spite of his request and demand to the petitioners to get executed and registered the agreement of tenancy, the petitioners avoided the tenancy and hence, committed an offence under Section 55 of the said Act. The petitioners question validity, legality of the said process.

4. Mr. Deshmukh, learned counsel for the petitioners submits, that the complaint petition is not maintainable. As per an oral agreement dated 1.6.2001, led the premises to be let out to the respondent No.2. In order to frustrate proceedings of eviction initiated by the petitioner, the respondent No.2 has filed afore-referred complaint under Section 55. Section 468 of the Criminal Procedure Code specifically deals with bar on taking cognizance after lapse of limitation. As the oral agreement was of June 2001, the complaint is filed in the year 2007 and on this ground alone, the complaint petition needs quashing.

5. Learned counsel for the petitioners has placed reliance to the judgments in :

(a) 2006 (3) Mh.L.J. 695 (Neerajkumar Umeshkumar Mor Vs. State of Maharashtra and others)

(b) 2005(4) Bom.C.R. 383 (Raj Prasanna Kondur Vs. Anif Taher Khan and others)

(c) AIR 1987 SC 2195 (Raj Kumar Dey and others Vs. Tarapada Dey and others)

(d) 1981 Cri.L.J. 1813 (Jethmal Himmatmal Jain and others Vs. State of Maharashtra)

(e) (2013) 2 SCC 435 (Awasthi Vs. State of Uttar Pradesh and another)

6. The learned counsel says, the delay is to be counted after 8 months from 1.6.2001 and the Supreme Court has extended period in few of the cases.

7. Mr. Bhandari, learned counsel for respondent No.2/ tenant has put emphasis on provisions of Section 55 of the said Act and canvassed, the act of registration on the landlords being an obligation, its failure persistently is a recurring cause and consequently, there will not be any bar under Section 468 or 473 of the Criminal Procedure Code.

8. Section 55 of the Maharashtra Rent Control Act, 1999 concedes as under :

"55. Tenancy agreement to be compulsorily registered:

(1) Notwithstanding anything contained in this Act or any other law for the time being in force, any agreement for leave and licence or letting of any premises, entered into between the landlord and the tenant or the licensee, as the case may be, after the commencement of this Act, shall be in writing and shall be registered under the Registration Act, 1908.

(2) The responsibility of getting such agreement registered shall be on the landlord and in the absence of the written registered agreement, the contention of the tenant about the terms and conditions subject to which a premises have been given to him by the landlord on leave and licence or have been let to him, shall prevail, unless proved otherwise.

(3) Any landlord who contravenes the provisions of this section shall, on conviction, be punished with imprisonment which may extend to three months or with fine not exceeding rupees five thousand or with both."

9. Reading of Section 55 as a whole, it is obvious that registration of agreement is a compulsory obligation upon the landlord. This is categorically envisaged in sub-clause (2) of Section 55, which also provides that in the absence of written agreement, the terms "the tenant would advance", would have effect. Sub-section (3) of Section 55 provides penalty.

10. Shri Bhandari has placed reliance to the judgments reported in:-

(i) 1991 (2) SCC 141 (Gokak Patel Volkart Ltd. Vs. Dundayya Hiremath)

(ii) AIR 1998 SC 1919 (State of Rajasthan Vs. Sanjaykumar and others)

(iii) AIR 1984 SC 1688 (Bhagirathi Kanoria Vs. State of Madhya Pradesh)

(iv) AIR 1999 SC 2071 (Arun Vyas and another Vs. Anita Vyas)

11. The judgments relied by Mr. Deshmukh, referred to above, mostly deal with Sections 23 and 25 of Registration Act, 1908 and the rule making power of the State. It provides time of presenting documents and specifies that it should be presented within four months from the date of its execution.

12. I quite see that, issue of limitation is a mixed question of fact and law and the adjudication necessarily can only be done by the fact finding Court. The complaint petition illustrate, lastly on 22.3.2007 the complainant/ respondent No.2 urged the petitioners for execution of the document, which has not been complied with. The non-abstant clause in Section 55, which is a special statute in itself, is indicative that provisions of Criminal Procedure Code and particularly Section 468 thereof will not be applicable. The requirement of Section 55 is, so long as the tenant/ respondent No.2 occupies the premises, the obligation flows to the petitioners to get the document executed and registered. The offence, therefore, certainly continues. Section 2(n) of the Criminal Procedure Code contemplate offence which constitute an omission of law for the time being in force. It also includes any act in respect of which a complaint may be made.

13. Law requires the petitioners, in fact, for each continuation of the lease period to get the document registered, which, as indicated, having cast an obligation, failure warrants the action. There cannot be a contest on the legal position indicated in the matter of Udai Shankar Awasthi Vs. State of Uttar Pradesh and anr. ((2013) 2 Supreme Court Cases 435) as referred in para 46 thereof, dealing with a reported case in the matter of Kishan Singh Vs. Gural Singh (2010 (8) SCC 775). The complaint petition of the respondent No.2, even if is filed after eviction proceedings by the petitioners, however, the inherent right in the respondent No.2 to take recourse to Section 55 of the Rent Act is not whittled away or foreclosed. The complaint petition cannot be branded as arduous proceedings.

14. According to Black's Law Dictionary, "continuing" means enduring, not terminated by a single act or fact, subsisting for a definite period or intended to cover or apply to successive similar obligation or occurrences. Continuing offence means, type of crime which is committed over a span of time. As to period of

statute of limitation in a continuing offence, the last act of the offence controls for commencement of the period. "A continuing offence, such that only the last act thereof within the period of statute of limitations need be alleged in the indictment or information, is one which may consist of separate acts or a course of conduct but which arises from that singleness of thought, purpose or action, which may be deemed a single impulse." So also, a "Continuous Crime" means "one consisting of a continuous series of acts, which endures after the period of consummation, as, the offence of carrying concealed weapons.

15. In the matter of State of Rajasthan Vs. Sanjaykumar (AIR 1998 SCC 1919), the Apex Court has dealt with scope of Sections 467, 468, 469 of the Criminal Procedure Code. Reverting to facts, it is explicit, the petitioners were made aware of the obligation to execute the lease deed on 22.3.2007, but the agreement was not executed.

16. Section 23 of the Registration Act will not flow in favour of the petitioners in fact situation, as it deals with limitation for registration of the documents already written. However, in the instant case, there is no such document as yet executed by the petitioners in favour of the respondent No.2. The cases referred by the learned counsel for the petitioners deal with award of arbitration and consequently, swing on different parameters. Effect of Section 473 of the Criminal Procedure Code comes into operation for the fact finding Court to extend period of limitation where a proper and satisfactory explanation of the delay is indicated and the Court find same to excuse. Such discretion naturally is with the trial Judge and whether it is judiciously exercised or not, would be a different conspectus. Section 468 of the Criminal Procedure Code would not create a bar.

17. Overall survey of the fact illustrate that the complaint petition moved by respondent No.2 for breach of Section 55 of the Maharashtra Rent Control Act was maintainable and does not call for interference in writ jurisdiction of this Court. Criminal Writ Petition dismissed. Rule discharged.

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