

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3672 OF 2013

Rebecca J. Jhirad .. Petitioner
vs.
Rama A. Virkar
(since deceased through heirs) .. Respondents

Mr. P.G. Karande for the Petitioner.

CORAM : M. S. SONAK, J.
DATE : 26 JUNE 2015.

P.C. :-

1] This petition challenges the order dated 23 February 2013 made by the Appellate Bench of the Small Causes Court at Mumbai to the extent it imposes a condition of deposit of Rs.10,000/- per month towards reasonable compensation for the petitioner to continue in possession of the suit premises despite decree of eviction made against her on 11 May 2012.

2] Mr. Karande, learned counsel for the petitioner, submitted that the petitioner is an aged lady, 79 years of age, who lives all by herself in the suit premises. In such circumstances, the condition imposed is too onerous and would virtually amount to denying the petitioner right to prosecute her appeal in an effective manner. Mr. Karande further submitted that the instances to which reference has

been made in the impugned order pertain to new premises having parking facilities and therefore, the said instances have incorrectly been recorded as comparable. Mr. Karande relied upon the decision of this Court in case of *Kishanlal Malhotra Vs. Smt. Bakula S. Gandhi & ors.*¹, in support of the submission that in imposing condition of this nature, financial capacity of the tenant is required to be taken into consideration and the condition should not be too onerous.

3] Having heard learned counsel for the petitioner and perused the record, in my judgment, the impugned order neither suffers from any jurisdictional error nor unreasonableness. The material on record indicates that the suit premises are located at Hindu Colony at Dadar, which is a prime locality and the rent/licence fees for comparable premises are substantially higher than the amount of Rs.10,000/- which has been determined in the impugned order. The impugned order, takes into consideration relevant parameters, including the capacity of the petitioner-tenant.

4] Although, it is true that the petitioner is an old lady 79 years of age, it has come on record that the petitioner has a son and daughter who are settled in United States of America and it has been

1 Writ Petition No. 6080 of 2008 decided on 30 August 2008

reasonably inferred that the said children are taking care of the applicant. Besides, there is also yet another daughter who lives at Ghatkopar.

5] Mr. Karande states that inference is that the children are maintaining the petitioner are not borne by any material on record. In proceedings of this nature, it is really too much to expect the landlord to place the material in this regard on record. If at all it is the case of the petitioner, that her three children, two of which are settled in United States of America, are not maintaining her or sending her any amounts for her upkeep at this age, then it was for the petitioner, to have pleaded this and placed some material in this regard. The petitioner has made no disclosure with regard to her income. There is no material on record that the relationship between the petitioner and her children is in any manner strained. The petitioner has not taken out any proceedings against her children for their alleged failure to maintain her. In these circumstances, the inference drawn by the Appellate Bench cannot be said to be perverse inference. An impression is gained that the age of the petitioner is sought to be put to forefront for the purposes of avoiding the deposit of even reasonable compensation. This is not a

case, where the children of the petitioner have declared that they intend to lay no claims to the tenanted property. The learned counsel for the petitioner was quick to point out that the petitioner would not be willing to accept any proposal, if such proposal were to be made, that the suit premises revert to landlord after her demise. If this be so, then it is quite unfortunate that such pleas are raised by putting forth the circumstance that the petitioner is aged lady residing all by herself in the tenanted premises.

6] It is also to be noted that the order impugned in the present petition was made on 23 February 2013. There is no interim relief granted by this Court. Despite the same, the petitioner has made no deposits as directed by the impugned order, even though the petitioner continues to enjoy the benefit of the interim order restraining execution of the eviction decree. This is clearly not proper. Mere pendency of a petition, does not operate as an automatic stay.

7] In the aforesaid circumstances, this petition is dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)