

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5399 OF 2015

Nutan Singh

... Petitioner

Vs.

Rajvendra Y. Pandey

... Respondent

Ms. Preethi Chamikutty a/w. Mr. Ajit Pitale, Advocate for the petitioner.
Mr. Vishal Kanade a/w. Mr. Ranvir Shekhawat i/b. Raj Legal, Advocate for
the respondent.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE : **JUNE 18, 2015**

P.C.:

This Writ Petition is filed for cancellation of possession warrant dated 28th April, 2015 passed by the learned Judge of the Family Court, Bandra in Petition No. A-2555 of 2013 and in Regular Darkhast No. 35 of 2015.

2. At the outset, the objection of maintainability of this Writ Petition is raised by the learned counsel for the respondent, however, amendment is allowed. Amendment is to be carried out forthwith and the order of issuing the warrant is to be challenged and accordingly, the prayer clause is to be amended forthwith.

3. Rule. Rule made returnable forthwith. By consent, this Writ Petition is decided finally at the stage of admission.

3. The petitioner/wife has filed the Petition for divorce. It was converted into mutual consent and the divorce was granted by mutual consent on 25th June, 2014. By way of consent terms, the petitioner/wife was allowed to retain the flat and continue her stay for a period of 6 months and then she was supposed to vacate the flat on or before 31st December, 2014 along with her belongings. The said flat belonged to respondent/husband. However, the petitioner/wife did not vacate the flat till today.

4. It is submitted by the learned counsel for the petitioner/wife that the petitioner/wife has filed Review Petition No. 90/2015 which is pending before the learned Family Court Judge and is fixed for hearing on 2nd July, 2015. The petitioner/wife seeks review of clause (vi) of the consent terms in respect of her residence in the said house. It is opposed by the learned counsel for the respondent.

5. Perused the consent terms. Clause (vi) of the consent terms is very clear. There is no ambiguity in any manner. It states that the wife shall continue to stay in the said flat for a period of six months and shall vacate the same on or before 31st December, 2014 along with her belongings. In view of this, the order passed by the learned Judge of the Family Court of issuance of possession warrant is legal, however, some indulgence can

be made only by extending the time to vacate the said flat.

6. It is expressed by the Court that time to vacate the flat by the petitioner/wife can be extended upto 31st August, 2015. In view of this, the learned counsel for the respondent/husband, on instructions from the husband, makes a statement that respondent/husband shall not press for execution of the possession warrant till 31st August, 2015

7. Writ Petition is dismissed.

(MRS.MRIDULA BHATKAR, J.)