

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.2507 OF 2014
(FOR INJUNCTION)

IN
WRIT PETITION NO.4051 OF 1996

Sarla Ramniklal Mehta
and Others ...Applicants

vs.

Dhanraj Kumar Daulatchand
and Others ...Respondents

Mr. A.A. Kumbhakoni, Senior Advocate a/w. Mr.
Sharadul Singh i/b. Santosh Parad, for
Applicants.

Mr. P.G. Karande i/b. Mr. M.G. Gawde, for
Respondent Nos. 7 to 12.

CORAM : K.R. SHRIRAM, J.

DATE : FEBRUARY 16, 2015

P.C.

. The applicants aggrieved by the judgment
and decree dated 15th June, 1996 of the Small
Causes Court, Mumbai had filed the present writ
petition under Article 227 of the Constitution of
India. By the order dated 13th January, 1997 this

Court was pleased to admit the writ petition and granted interim relief in terms of prayer clause (b) whereby staying the impugned judgment and decree.

2. It is the case of the applicants that they are the tenants since 1928. The respondent Nos. 7 to 12 are the landlord of the suit premises. The applicants/petitioners have been parking their vehicle with the consent of the landlord in the space earmarked parking space open to sky. Behind the space permitted for parking the petitioner's car, there is a garage which is kept closed. Inside the garage, the respondents have been parking a silver plated Chariot(Rath), which is used for religious ceremonies. The arrangement between the parties herein was that, as and when the Chariot was required to be removed from the garage, the applicants were requested to remove their car and once the purpose for which Chariot is taken out is

over, the Chariot will be rolled back into garage and then the applicants would park their car in front of garage. This arrangement has been continued for a very long time. Even after the present petition was filed, admitted and interim order passed, the said arrangement has been continuing.

3. On or about 20th September, 2014 as per usual practice, the applicants were requested to remove their car so that, the Chariot could be taken out. The applicants as they have been co-operating all the while, removed their car and the Chariot has brought out. Thereafter, the Chariot has remained at the place where the car was always parked. The applicants have not been able to park their car in the space provided in view of the Chariot been kept there. The respondents are refusing to move the Chariot back into the garage and hence the applicants have approached this Court

to direct the respondents to continue with the old arrangement.

4. The counsel for respondent Nos. 7 to 12 strongly opposed this application. The learned counsel for the respondents submitted that the tented premises is a flat which is the subject matter of the petition and therefore the provisions of the Rent Control Act is not applicable as regards the present application is concerned. The counsel further submitted that this was not the subject matter of the dispute before the trial Court and in the appellate Court and therefore this Court should not entertain this application.

5. The counsel also submitted that it was only a facility that was granted to the applicants and the applicants can not demand as a matter of right to be permitted to park their vehicle in the open space just because they were doing so earlier.

6. I have considered the application and the reply and the arguments put forthwith by the respective counsels. It is correct that the subject matter of the present application was not the issue in earlier trial proceeding. The subject matter of the present application may not have been even discussed in the trial Court, because that was never an issue. The applicant's right through have been allowed to park the vehicle until September, 2014. Moreover, if I accept the respondents submissions, then the applicant will have to file fresh proceedings which will add to the burden of the already overburdened Courts. Further the issue in this application is directly concerned to and related to the fact of the petitioners occupation of the suit premises. It was a facility that the petitioners engaged with the occupation of the suit premises. If petition is dismissed, petitioner's facility to park their car also will be over/discontinued. Therefore, in order to obviate

filing of fresh proceedings, I am inclined to consider the present application.

7. This arrangement has been going on for many years. Admittedly, even after the present petition was admitted and stay granted, the respondents permitted the applicants to park their vehicle at the open space as they were doing earlier. The petition has been pending for almost 18 years and there is nothing in the reply to show why the sudden action was taken by the respondents.

8. While looking at the balance of convenience, I see no prejudice will be caused to the respondents if the respondents continue to keep the Chariot inside the garage and permit the applicants to park their vehicle in front of the garage as per the arrangement going on for period in excess of 18 years. Keeping Chariot inside the garage would also protect it from vandalising. The

Chariot is a symbol of religious harmony and if it is kept at the place open to sky, it can get damaged or the silver get stolen or vandalised.

9. In the circumstances, in the interest of justice, I am inclined to exercise my powers not only under Article 227 of the Constitution of India but also under Section 151 of Code of Civil Procedure to allow the application in terms of prayer clause (b).

10. Application is accordingly allowed and disposed of in terms of prayer clause (b) with no order as to cost. Prayer clause (b) reads as under :-

"Pending the hearing and final disposal of the Writ Petition No. 4051 of 1996, the Respondents- Landlords – Trustees and their servants, agents, subordinates and/or any other person claiming through them, be restrained by an order of injunction from obstructing and/or preventing the Applicants – Petitioners from parking their cars in the earmarked parking

*space open to the sky i.e. in the compound
between the grill gate and the garage."*

11. The counsel for the respondents seeks
stay. Stay refused.

(K.R. SHRIRAM, J.)