

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

CIVIL REVN. APPLICATION NO. 1074 OF 2014

Mrs. Ivy Lawrence Alvares & anr.

... Applicants

v/s

Mrs. Joanna Francis Correa
(since deceased) through legal heirs
1(a). Smt. Yvette D'Souza & ors.

... Respondents

Mr.A.M. Saraogi along with Santosh Saroj for the applicants.

Mr.Dakshesh Vyas along with D.S. Sabnis and Durgesh Kulkarni
i/by Lex Firms for the Resp. Nos.1A to 1C and 4.

CORAM: N. M. JAMDAR, J.

DATED : 6TH MAY, 2015

ORAL ORDER:

Heard learned counsel for the parties.

2 The applicants challenge the order passed by the Appellate Bench of Small Causes Court, Mumbai, dated 29 October 2013, and the order passed by the learned Small Causes Court, Mumbai, dated 22 July 2009, directing eviction of the respondents from the premises.

3 The suit was filed by the respondents for recovery of possession of the suit premises which is ground plus first floor,

situated at Misquitta Street, Vile Parle (East), Mumbai – 400 057, bearing House No.54A, Survey No.145, Hissa No.5 and CTS No.1428. The suit was filed on the ground of acquisition of alternate premises by the applicant, non-user and bonafide requirement of the respondents. Both the Trial Court as well as the Appellate Court found that all three grounds were proved against the applicants.

4 As regard the acquisition of the premises, it is the assertion of the respondents that premises at Flat No.4, first floor, Florenca Building, Amritvan Complex, near Yashodham Shopping Centre, Goregaon (East), Mumbai – 400 062, have been acquired by the applicants. It is the case of the applicants that they are in the name of applicant/defendant No.2, however, no documentary evidence to that effect has been produced. Both the Courts have rightly drawn adverse inference against the applicants.

5 As regard the bonafide requirement, it is the case of the respondent that the respondent is suffering from various ailments. She is currently in occupation of one hall, one bedroom, one kitchen and one attached toilet. She lives with her son and daughter, and the premises are inadequate. Nothing is shown to discredit the assertion of the respondents about bonafide requirement. The difficulties narrated by the respondents, which are found to be correct by both the Courts below, constitute bonafide requirement. Both the Trial Court and the Appellate

Court have discussed in detail the insufficiency of the premises. There is nothing perverse about the assessment of evidence.

6 Therefore, there is no reason to interfere in the impugned orders as there is no perversity, neither there is any error of jurisdiction. The civil revision application is rejected.

7 However, considering the facts and circumstances of the case, I am of the opinion that, some time be granted to the applicants to vacate the premises. Six months' time to vacate the premises, to my mind, would be adequate. This will be, however, on the condition that the applicants and all other adult members of the family filing an undertaking in the prescribed format in the Registry of this Court with a advance copy for the respondents, by 10 June 2015. The undertaking shall *inter-alia* contain that applicants alone are in possession and will not create third party rights and will hand over the possession of the suit premises by the expiry of six months i.e. 7 November 2015. If the undertakings are not filed by 10 June 2015, the decree shall become executable forthwith.

(N. M. JAMDAR, J.)