

Sequeira

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

***CIVIL APPLICATION NO. 1494 OF 2016
IN
WRIT PETITION NO. 7105 OF 2005
Along with
WRIT PETITION NO. 7104 OF 2005
Along with
WRIT PETITION NO. 7106 OF 2005***

Mrs.Satadal Kamal Bose and ors.	.. Applicants / (Org. Petitioners)
<i>In the matter between</i>	
Mrs.Satadal Kamal Bose and ors.	.. Petitioners
Versus	
Mrs.Gauri S.Ghosh & ors.	.. Respondents

***with
CIVIL APPLICATION NO. 257 OF 2010
IN
WRIT PETITION NO. 7104 OF 2005
Along with
CIVIL APPLICATION NO. 259 OF 2010
IN
WRIT PETITION NO. 7106 OF 2005***

Mr.Debasis S. Ghosh	.. Applicant
Versus	
Mrs.Satadal Kamal Bose & ors.	.. Respondents

Mr.Nusrat Shah a/w Ema Almeida, Kevin Gala and Samaa Shah i/b N.N.Shah, for the Applicant in CAW No.1494 / 2016, and org. Petitioner in all petitions.

Mr.Cyrus Ardesir a/w Madhavi Nalluri i/b Sameer Bhalekar , for Respondent No.3 in all petitions and CAW No.257 of 2010 and CAW No.259 of 2010.

***CORAM : N.M.Jamdar, J.
Friday, 9 December 2016.***

Oral Order :

By this Civil Application taken out by the Respondent No.3, the landlord, a prayer is sought for early hearing of the Writ Petitions and also in the alternate for appointment of a Court receiver and to appoint the Applicants-landlords as an agent of the Court receiver.

2. The premises are located on the second floor of the building known as Newfair Co-operative Housing Society Ltd., Flat No.12, of the building known as Mayfair-B, situate at Swami Vivekanand Road, Bandra. The premises are located in a Cooperative Housing Society. The premises were initially let out to the father of the Respondents. Thereafter the Respondent No.1, mother of the Respondent Nos.2 and 3 continued to reside in the premises. According to the Applicant they were let out on 1 January 1978 for a period of eleven months. The original licensee-tenant expired during the appeal proceedings. Thereafter his wife Respondent No.1 expired on 25 March 2016 leaving behind the sons Respondent Nos.2 and 3.

3. Rule has been issued in these three Petitions and the Petitions are pending for final hearing. In these Petitions, the Petitioners i.e. the Applicants have sought to challenge the judgment and decree passed by the Appellate bench dated 28/ 29 March 2005 in Appeal

No.199 of 2004 and Appeal No.200 of 2004 of Small Causes Court, Bombay wherein the judgment and decree passed by Small Causes Court, in L.E. & C. Suit No.515/562 of 1987 dated 29 March 2004 decreeing the suit in favour of the Petitioner-Applicants, was reversed. As far as the request for early hearing is concerned at present Writ Petitions of the year 1996 are on board and the board for final hearing is taken chronologically, with out of turn priority to the Supreme Court expedited matters. In the circumstances, it is not possible to accede to the prayer made by the learned counsel for the parties for out of turn hearing of the Writ Petitions of the year 2005. This was made clear on the earlier occasion and the Civil applications were placed on board today for consideration of the prayer for grant of receiver. Therefore, the prayer made by the Applicants for appointment of receiver will have to be considered as by way of equitable interim arrangement between the parties, during the hearing.

4. Mr.Nusrat Shah, the learned counsel for Applicants submitted that as far as Respondent No.3 is concerned i.e. the son, the original licensee-tenant is now settled in United States. This position is also not in dispute. Mr.Shah submitted that on merits, the Applicants have a good case and the licensee-tenant has admitted that after the period of eleven months when the license was initially granted, it was not so renewed. He submitted that there is virtually no defence for Respondents as the case of being a protected tenant also cannot be

advanced. The learned counsel submitted that Applicants-landlords are undergoing serious hardship for lack of premises. He submitted that the Respondent No.3 has premises of his own which he himself has stated so in a Civil application No.257 of 2010 in Writ Petition No.7104 of 2005 filed by Respondent No.3 on 19 December 2009 earlier. Mr.Cyrus Ardeshir, the learned counsel for Respondent No.3 on the other hand submitted that grant of such prayer at interim stage would be allowing the Writ petition. He submitted that the averments made in Civil application now were in the peculiar facts and circumstances keeping in mind the dementia suffered by the mother of Respondent No.2. He also submitted that Applicants have suppressed the reply filed by Applicants in the said Civil application, wherein it is stated that the Respondent No.2 is occupying the premises. The learned counsel submitted that an averment has been made in the reply filed to present application that the Applicants have premises of their own and the premises currently in possession of the Respondent No.2 are in the name of his wife.

5. As far as the power of this court to appoint receiver as an equitable arrangement between the parties, it is not disputed by Mr.Ardeshir. It is however his contention however that in facts of the present case grant of receiver is not warranted. Therefore, the position as on date to find out whether such a prayer made by Applicants is justified or not will have to be ascertained.

6. In the application, the Applicants have asserted that they are senior citizens, their son is of marriageable age. The building where they are presently residing is going for redevelopment and they will be forced to stay in rented premises while the suit premises would be lying locked and unused in view of after Respondent No.1 and both the Respondent Nos.2 and 3 are presently settled elsewhere. On the other hand, reply filed by Respondent No.3 is that the premises in his possession, that is flat no.602, the Ark, Nehru road, Vakola, is in the name of his wife and he has been regularly visiting the suit premises and that he has carried out renovations.

7. The Civil Application No.257 of 2010 was filed by Respondent No.3 on 19 December 2009. It was stated that his mother was in exclusive possession of the premises and he has acquired his independent accommodation at Vakola Santacruz and he is not interested in the suit premises in any manner whatsoever and will not claim any right and his name be deleted. If the reply filed by the Applicants to this civil application, which is relied upon by Mr.Ardeshir is seen, it does not state that the premises are being currently used by the Respondent no.3, in unequivocal terms. The reply will have to be read in totality. The deletion of Respondent No.3 was opposed on the ground that Respondent No.3 is trying to resile away from his obligation to pay the compensation and it is in that context a statement was made that the Applicants were living all throughout in the suit premises with parents. Therefore, this cannot

be considered as an admission on the part of Applicants that the Respondent No.3 is currently occupying the said premises and is residing therein throughout even as of today. Mr.Shah drew my attention to the statement made by the original tenant -licensee in the evidence to the effect that he and his wife alone were living in the premises.

8. A reply has been filed by Respondent No.3 in this civil application. Nothing stopped the Respondent No.3 from placing on record various documents or important correspondence, his ration card, driving license and such other documents to demonstrate that he is currently living in the premises and would be on streets if a receiver is appointed. On the other hand it is accepted that he is residing at Vakola, Santacruz. The only explanation given is that the flat is in the name of his wife. To a query, Mr.Ardeshir admitted that the relationship between Respondent No.3 and his wife is not strained neither there are any matrimonial proceedings pending. Therefore it is clear that Respondent No.3 has his own premises and this stand is even taken by him in the Civil application filed by him. The reasons given for taking such stand in the Civil application in the affidavit is not believable. The reason given is that such Civil application had to be filed because his mother was insecure and was suffering from dementia that mother would be dispossessed or someone else will claim a right. The mother was living as a licensee / tenant. How the Respondent No.3 will dispossess her is not

understood, to take such stand. It is only the Applicants-landlord who could have taken steps to dispossess her from the premises. Therefore the explanation given in affidavit in reply is only to overcome the stand taken in the Civil application, which was filed to resile away from payment of compensation, as contended by the Applicants.

9. In the reply only one sentence has been added that Applicants have other premises for their use and occupation. No specifications have been given. It is not that the reply had to be filed in a hurry. Nothing is stated as to the premises in possession of Applicants and the impending renovations. Nothing is placed on the record that there are any premises in the occupation of Applicants. Considering the chronic shortage of living space in Mumbai and time that takes for hearing of disputes between licensor and licensee, tenant and landlord, an equitable arrangement between the parties till their matter is heard, will have to be arrived at.

10. I have looked at the equities in respect of both the parties. Having been convinced that after the death of the original tenant / licensee and his wife, the premises are not been occupied by the two sons who are permanently settled elsewhere. The Respondent No.3 will not suffer any prejudice if during the pendency of the writ petitions the landlord is permitted to occupy the premises as an agent of the court receiver subject to the final outcome of this petition.

11. Mr.Ardeshir then submitted that Respondent No.3 has spent substantial amount for renovation of the premises. To this Mr.Shah submitted that factually there may have been repairs / renovations carried out however, they cannot be carried out without the permission of the licensor / landlord and the cooperative housing society would take objection and hold the landlord / licensor responsible. However, the factum of repairs does not appear to have been denied therefore this fact will also have to be taken into consideration. I am inclined to direct the Applicant to deposit an amount of ₹ 5000 per month as corpus for repairs expenses to be adjudicated at the time of the hearing of the Petitions.

12. Therefore, considering the totality of the circumstances, the Civil application is disposed of in terms of prayer clause (a) with modification in respect of the monthly amount as above.

13. At this stage, Mr.Ardeshir seeks stay of the operation of this order for a period of eight weeks. Mr.Shah objects. Though I am inclined to grant period of six weeks from today since it will take some time to get copy of the order, the operation of this order is stayed for period of eight weeks from today. Mr.Ardeshir states that Respondents will not create any third party rights in the suit property. This statement is accepted.

(N.M.Jamdar, J.)