

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

WRIT PETITION NO.4746 OF 2015

Charu Piyush Gupta

...Petitioner

vs.

JP Morgan Chase Bank National Association,
Mumbai & Ors.

...Respondents

Mr. Mayur Khandeparkar a/w Mr. Gandhar Raikar for the
Petitioner.

Mr. Pravin Samdani, Senior advocate a/w Mr. Ieshan Sinha i/b
Wadia Ghandy & Co. for Respondent No.1.

Mr. P. K. Dhakephalkar, Senior advocate i/b Mr. Jaydeep Deo for
Respondent No.2.

CORAM : N.M.JAMDAR, J.

DATE : DECEMBER 13, 2016.

ORAL ORDER:

. Heard learned counsel for the parties. By the consent
of learned counsel for parties taken up for final disposal.

2. The Petitioner has challenged orders passed by the
Appellate Bench of the Small Causes Court, Mumbai dated
21/11/2013 and 24/4/2015 whereby the Appellate Bench of
Small Causes Court has directed the Petitioner, who is the wife of
Respondent No.2 to pay compensation to the tune of Rs.126000/-
p.m. in respect of the suit premises, to Respondent No.1. This
order is passed on the Revision Application filed by Respondent
No.2 before the Appellate Bench of Small Causes Court.

3. Respondent No.1, the original plaintiff, has filed a suit

in respect of the premises viz. Flat No.22, Jal Kiran Co-operative Housing Society, Cuffe Parade, Mumbai 400 005.

4. It is the case of Respondent No.1/plaintiff that the suit premises have been taken on Leave and License basis from Respondent No.3 at 126500/- per month to provide residential accommodation to Respondent No.2 during his employment as the Managing Director. It is the case of Respondent No.1 that after 1/8/2012 the possession of Respondent No.2, the Petitioner and their children is unlawful and accordingly possession is sought for from Respondent No.2 and the Petitioner. The learned Small Causes Court Judge on hearing the application moved below Exh.9 held that Respondent No.1 was entitled to get the compensation of Rs.126500/- per month from October 2012. The learned Small Causes Judge took a note of the matrimonial dispute between the Petitioner and Respondent No.2 and directed that it shall be the liability of Defendant No.2 to pay the amount of Rs.126500/- per month. As regards the claim of Respondent No.1 regarding refund of security deposit it was deferred to be decided at the time of hearing.

5. In the Revision, the Appellate Bench considered the disputes between Respondent No.2 and the Petitioner and held that the liability to pay the amount directed by Small Causes Court shall be of the Petitioner and accordingly directed the petitioner to pay the amount of Rs.126500/- per month.

6. Heard Mr. Mayur Khandeparkar for the Petitioner, Mr. Pravin Samdani, Senior advocate for Respondent No.1 and Mr. P. K. Dhakephalkar, Senior advocate for the Respondent No.2.

7. Mr.Khandeparker, learned counsel for the Petitioner submitted that it is not the responsibility of the Petitioner to pay the amount and that the Petitioner was not heard when the order came to be passed by the Appellate Bench and that the financial position of the Petitioner is not such that the Petitioner can pay the amount of compensation, which the Respondent No.2 can certainly pay. Mr. Dhakephalkar, learned counsel for Respondent No.2 contended that Respondent No.2 has already submitted to the decree and does not wish to continue in the premises. He submitted that various offers were given to the Petitioner, which have not been accepted. Mr.Samdani, learned counsel for Respondent No.1 on the other hand submitted that as far as Respondent No.1 is concerned it is entitled to receipt of the amount as directed by the Court and inter se dispute between the petitioner and Respondent No.2 is not the concern of Respondent No.1.

8. As of today, the proceeding filed by Respondent No.1 are pending in the Small Causes Court. It has been asserted by Respondent No.1 that it has taken the premises on leave and license basis from Respondent No.3/original landlord to whom Respondent No.1 is liable to pay the license fee. In these circumstances the order upholding the entitlement of Respondent

No.1 and directing payment to Respondent No.1 cannot be faulted with. Respondent No.1 is not in possession of the premises. By entering into interse liability between the Petitioner and Respondent No.2, the husband and wife, the Small Causes Court Judge and the Appellate Bench has entered into the merits of this matrimonial dispute. By my indulgence this Court adjourned the petition on various dates to find out whether the matter can be amicably settled. However, till date the parties have not been able to resolve the dispute.

9. Mr. Khandeparker and Mr. Dhakephalkar after arguing the matter for some time, on instructions, accepted the position that such adjudication of purely matrimonial dispute will be beyond the scope of Small Causes Court and necessary orders will have to be sought in the pending matrimonial proceeding.

10. Mr.Khandeparker, learned counsel for the Petitioner submitted that an application has been moved in the Court of Additional Chief Metropolitan Magistrate, Esplanade, Mumbai in Case No.3/M/2012 under Domestic Violence Act,2005 with a prayer that the Petitioner may be provided a suitable alternate accommodation. He also stated that an application is already filed before the learned Chief Metropolitan Magistrate wherein relief has been sought against Respondent No.2 to make payment of the compensation as ordered. Therefore the Petitioner has already moved the Competent Court for resolving the dispute as regards accommodation and payment of compensation. As far as the Small

Cause Court is concerned, as long as family continues to be a unit, the Small Causes Court need to have entered into the relationship between the Petitioner and the Respondent No.2. Mr. Khandeparkar and Mr. Dhakephalkar, on instructions, submitted that both the orders passed by the Small Causes Court and the Appellate Bench of the Small Causes Court be quashed and set aside and the application filed by Respondent No.1 below Exh.9 be restored to file and some time may be given to the parties so that the two applications before the learned Magistrate are decided. Mr. Samdani, learned counsel for Respondent No.1 submitted that as long as right of Respondent No.1 to receive compensation is protected Respondent No.1 is not averse to the course of action which is suggested by the learned counsel for the Petitioner and Respondent No.2.

11. Considering the jurisdiction of Small Causes Court, I am of the opinion that the course of action suggested by the learned counsel is fair, proper and correct.

12. Accordingly writ petition is disposed of by consent as under:

- i) The order passed by the Small Causes Court dated 18/3/2013 and of the Appellate Bench of Small Causes Court dated 21/11/2013 are quashed and set aside;
- ii) The Application taken out by Respondent No.1 below Exh.9 in L.E. & C. Suit No.186/229 of 2012 is restored to file, to be decided on its own merits;

iii) The learned Additional Chief Metropolitan Magistrate, 47th Court, Mumbai is requested to dispose of the applications, in Case No.3/M/2012, filed by the Petitioner on 1/6/2013 in respect of seeking accommodation and for direction to pay compensation, within a period of 6 weeks from the date of receipt of this order;

iv) After the decision is so given by the learned Magistrate, the parties shall forthwith communicate the outcome of the same along with copy of the order to the Respondent No.1 and the attorneys of the Respondent No.1. Respondent No.1 will place the same before the learned Small Causes Court, in the pending proceeding to proceed further with the application filed below Exh.9;

vi) Small Causes Court thereupon will hear and decide the application as expeditiously as possible;

vii) It is open to the Petitioner to make an appropriate request to the learned Magistrate in respect of filing an additional affidavit, which the learned Magistrate will consider if the learned Magistrate finds it necessary to give such an opportunity for complete adjudication of the dispute.

13. The Registry shall communicate the order forthwith;

(N.M.JAMDAR, J.)