

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.1090 OF 2014

Mrs. Anuradha w/o. Satyanarayan
R. Iyengar

.. Petitioner

*-Versus-*Chandrashekhar Sachindranath
Chakravarty

..Respondent

Ms. Vidita S. Bhalekar i/b. Mahesh Dhuri for petitioner / applicant.
None for respondent.

CORAM : G.S.KULKARNI, J.

DATE : 20th January 2016.

P.C.

1] Heard learned Counsel for the applicant.

2] The challenge in this application is to the judgement and order dated 30th July 2014 passed by the Appellate Bench of the Small Causes Court, Mumbai dismissing petitioner's appeal, whereby, the judgement and decree of the learned trial Judge dated 30th January 2009, by which the suit filed by the respondent, seeking eviction of the petitioner on the ground of bonafide requirement has been decreed, directing eviction of the petitioner.

3] There are concurrent findings of fact against the petitioner. Petitioner's father was the original tenant of the suit premises. The petitioner after her marriage was staying at her matrimonial house at Chembur, Mumbai and not in the suit premises. It was the case of the petitioner that she came to reside in the suit premises in May 2002 to take care of her ailing sister, Ms. Padmamalini. However, it has come in evidence that the defendant sister Ms. Padmamalini was in USA between the period 18th January 2003 to 3rd March 2004, on account of her marriage to a person in USA and, thereafter, she came to India as her domestic relationship deteriorated. Petitioner's father who was original licensee expired leaving behind his widow Mrs.Ambuja (Petitioner's mother) and her daughters. The mother passed away on 15th April 2003. The two daughters are the petitioner Ms.Padmamalini and Ms. Jayashree. By an affidavit dated 26th April 2003, duly executed by Ms. Padmamalini and her sister Jayashree, the tenancy rights in respect of the suit premises were admittedly relinquished in favour of the petitioner. A finding of fact has been recorded that Ms. Padmamalini was not residing with the mother of the petitioner, when the mother expired on 15th April 2003 as she was in USA so as to independently claim a right of tenancy.

4] The principal defence which was taken by the petitioner before the

trial court was that the sister of the petitioner Ms. Padmamalini was in need of premises as she was ailing. As observed above, a finding of fact has been recorded that Ms. Padmamalini could not have claimed any tenancy rights in respect of the suit premises. It is significant to note that Ms. Padmamalini tried to intervene in the suit filed by the respondent by moving an intervention application. The said intervention application was adjudicated by the trial court and by an order dated 15th June 2006, the learned trial Judge rejected the said application. The consequence of this rejection is that Ms. Padmamalini could not become a party to the suit and was precluded from independently asserting her rights to defend the suit. It appears from the record that this order dated 15th June 2006 of the trial court had attained finality. It was, therefore, clear that the petitioner could have defended the suit only qua her legal rights as tenant and she could not have asserted a plea of tenancy rights being accrued to her sister, Ms. Padmamalini and that Ms. Padmamalini was in need of the suit premises. The petitioner however prosecuted the appeal to pursue the cause and defend the eviction on the ground of need of her sister, Ms. Padmamalini which, in my opinion, has been appropriately dealt with by the courts below.

5] Ms. Padmamalini was admittedly a third party to the original suit and the grievance of Ms. Padmamalini could not have been pursued by

the petitioner in respect of the suit premises. It is pertinent to note the relevant portion of the declaration/ affidavit dated 26th April 2003, whereby Ms. Padmamalini and her sister Jayashree had relinquished their tenancy rights in respect of the suit property in favour of the petitioner and also had accordingly intimated the same to the respondent landlord. The relevant portion reads as under:-

“8. We say that by common consent of ourselves we have selected and nominated one of us viz., Smt. S. Anuradha, the deponent No.1 herein who was also the only member of the tenant's family residing with the said deceased tenant as the time of the death of the said deceased tenant to succeed to the tenancy rights of deceased tenant, late Ambuiji Narsimhan. We accordingly, say that as per the provisions of section 7(15) of the Maharashtra Rent Control Act, 1999, the legal heir of the said deceased tenant Ambuji Narasimhan viz., Smt. S. Anuradha, the deponent No. 1 has become the successor tenant in accordance with the provisions of section 7(15) of the Maharashtra Rent Control Act, 1999.”

6] As regards the finding of fact recorded by the Courts on the issue of bonafide requirement, the same is in no manner perverse or an improper exercise of jurisdiction, requiring interference of this Court. The bonafide requirement was that the respondents were residing in the flat of his father with his family as well as his handicapped sister and the said accommodation falls short of the requirement of these members of the

family. Therefore, the suit premises were bonafide required for the use of the family. I do not find any perversity in the findings as recorded by the courts below and that the respondent had proved bonafide requirement and reasonable need for the respondent to possess the suit premises. It is quite apparent from the record that the defence as taken by the Petitioner when tested on evidence, was wholly insufficient to non-suit the Respondent.

7] For the aforesaid reasons, no case has been made out in the present application for interference of this Court. The CRA is devoid of any merits and the same is accordingly dismissed. No costs.

8] At this stage, learned Counsel for the petitioner seeks six months time to vacate the suit premises. It is noted that there was an ad-interim order which was in operation. It is, therefore, in the interest of justice that, notwithstanding the dismissal of the revision application, the decree for possession be ordered to be not executed for a period of six months from today i.e. July 20, 2016, subject to the condition of the petitioner filing the usual undertaking within a period of two weeks from today, undertaking that the petitioner and all adult family members shall vacate the suit premises on or before 20th July, 2016, and a copy of this undertaking be furnished in advance to the advocate for the respondents.

If the undertaking is not filed in this court within the stipulated period, the decree of eviction shall become forthwith executable.

(G.S.KULKARNI, J)