

Sequeira

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

***WRIT PETITION NO.1690 OF 2009
Along with
CIVIL APPLICATION NO.2073 OF 2016
(For vacating stay)***

Shri Vijaysingh Gordhandas.	.. Applicant
<i>In the matter between</i>	
Mrs.Lata Raman Jain	.. Petitioner
<i>Vs</i>	
Shri Vijaysingh Gordhandas.	.. Respondent

Ms.Asha Bhambwani, for the Applicant in Civil Application No.2073 of 2016 and the Original Respondent.

Mr.R.M.Haridas, for the original Petitioner.

***Coram : N.M.Jamdar, J.
Date : 24 March 2017.***

Oral Order :

This Civil Application is taken out by the original Respondent to vacate the interim protection granted in favour of the Respondent – original Petitioner.

2. The Applicant is the original Plaintiff-landlord of residential premises situated at Kalbadevi Road, Mumbai. The suit premises were given on rent to one Sonaram Annaji Purohit. Sonaram being tenant had expired and hence legal heirs filed the proceeding by way

of R A E & R Suit No.989/2150 of 1994, which was decreed. It was the case of the Applicant-original Plaintiff that the tenant was in arrears of rent. The said Sonaram who had expired and his heirs had not paid the rent and they were in default. The tenancy was accordingly terminated. The suit filed by the Applicant was decreed on 16 September 1997. When the decree was sought to be executed the Respondent- original Petitioner was present in the suit premises. The Obstructionist Notice No.19 of 1998 was taken out. The executing Court held an inquiry and held that the Respondent-original Petitioner failed to prove any right to the suit premises. Accordingly the Obstructionist Notice was made absolute by order dated 10 April 2003. The Appeal was filed by the Respondent-original Petitioner bearing No.485 of 2003 before the Appellate Bench of Small Causes Court Mumbai, which was dismissed on 30 September 2008. Thereafter the present Petition was filed in which rule was issued on 21 July 2009 and parties were directed to maintain status-quo. The present Civil Application is taken out alleging that the heirs of deceased Sonaram were put in possession by the Respondent-original Petitioner, who has then taken out proceeding M.A.R.J.I. No. 78 of 2013 and to set aside the decree passed in R.A.E Suit No.989 of 2150. It is the contention of the Applicant-original Respondent that by putting the heirs of deceased Sonaram in possession without seeking leave of this Court, the original Petitioner breached the order of status-quo. It is submitted that reply affidavit has been filed on 18 October 2016 wherein the original Plaintiff has

admitted that the heirs of deceased Sonaram were put in possession and it has been asserted that this was so done since their father was close friend of the husband of the Applicant and they are now staying along with them. The learned counsel for the Applicant-original Respondent submitted that in view of the acts of the original Petitioner, further complication is created by which the heirs are put in possession and who on the basis of the same have now moved Small Causes Court for setting aside the decree passed in the suit and the Applicant is therefore required to needlessly face two litigations, one by way of Obstructionist Notice and the Suit filed by the original heirs of the Applicant. The learned counsel for the original Petitioner submitted that there was no intention to breach the order of status-quo and the act of original Petitioner was an inadvertent mistake.

3. It is difficult to believe that the action of the original Petitioner was merely a mistake. The contention that the Applicant-original Respondent is not aware of the legal intricacies also cannot be accepted. When two Courts are against the Applicant on the ground that the Applicant has no right in the premises and this Court has passed an equitable order protecting the possession of the original Plaintiff on the ground that they will maintain status-quo of the suit property, the original Petitioner has bravely gone ahead and allowed the original heirs to enter into the premises who have now instituted a suit which the Applicant has to face. The manner in which the litigation is fought it is clear that the original Petitioner had a

deliberate intention to delay the execution of the decree by knowingly creating complications in the way of the Applicant. The learned counsel for the Applicant is right in contending that the Applicant need not face two different litigations against the Respondent and the original Petitioner hence with full knowledge has created this situation and has breached the order of status-quo. The equitable relief granted in their favour cannot be continued any further. In any case, the heirs who are stated to be staying along with the original Petitioner have filed proceedings to challenge the decree which the Applicant will have to contest and it is not that, the moment status-quo is vacated in this Writ Petition, the Applicant is able to get immediate possession of the suit property. However, the continuation of the status-quo at the behest of the original Petitioner in the above circumstances, cannot be continued, and is vacated.

4. The learned counsel for the original Petitioner states that in view of the above conclusion that the proceedings filed by the heirs of deceased Sonaram are to be decided on its own merits, then the present Writ Petition need not be kept pending. Accordingly, the Writ Petition is also disposed of. Any proceedings filed by the heirs of deceased Sonaram will be decided on its own merits.

(N.M.Jamdar, J.)