

Sequeira

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

*CIVIL APPLICATION NO. 53 OF 2017
(Delay condonation)*

In

R.P.C. St. NO. 3447 OF 2017

In

CIVIL REVISION APPLICATION NO. 577 OF 2016

Shri Pandurang Ramdas Joshi.

.. Applicant / Review
Petitioner.

Vs

Shri Ulhas Shankar Patankar.

.. Respondent.

Mr.Sanket Telang, for the Applicant and the Petitioner in Review
Petition.

Mr.Rajesh Patil a/w Ms.Sana Khan, for the Respondent.

***CORAM : N.M.Jamdar, J.
Wednesday, 22 February 2017.***

P.C. :

Heard learned counsel for the parties. Perused the Civil
Application No.53 of 2017. Delay of 15 days in filing Review
Petition is condoned. Civil Application is accordingly allowed.

2. The Review Petition is taken up for consideration forthwith.
On 19 December 2016, after hearing the learned counsel for the
parties at length by detailed order the Revision Application No.577
of 2016 was disposed of. While disposing of the Revision
Application, in paragraph 4 of the order, following was noted -

'4. Therefore, the only question that remains is of comparative hardship. It is stated by the Applicant in his written statement that he does not wish to stay with his sons who are settled and wants to stay separate. Before both the Courts, it was the case of the Applicant was that the Applicant wishes to stay separately from his sons in a dignified way of living. Considering this position and the age of the Applicant, it was put to the learned counsel for the Respondent whether the Applicant can be permitted to reside in the suit premises till his life time. The learned counsel for the Respondent, on instructions, agreed. After that matter was adjourned. However, surprising ,after the proposal was accepted by the Respondent, the learned counsel for the Applicant insisted that the matter has to be argued as the Applicant's son has interest in the said property. There is no such independent right. Such stand will have to be deprecated. The Applicant has clearly stated that he wished to stay alone, there is no question of the son of the Applicant having any right in the premises. No such case was put up by the Applicant. Therefore, the application is being pressed, it appears, on the instructions of his son and not on the instructions of the Applicant himself, which is a very unfortunate state of affairs. A reasonable stand taken by the Respondent landlord is not accepted by the son of the Applicant, purely with a greed for the premises. Bonafide need of the landlord is proved, the offer of the Respondent to permit the Applicant to stay in the premises till his life time is refused by the Applicant's advocate on instruction from Applicant's son. In the circumstances, nothing further can be done in this application except confirming the findings of fact rendered by both the

Courts. The Revision Application is accordingly dismissed with costs quantified at Rs.25,000/- payable to the respondent within four weeks from today.'

3. Before disposing of the Revision Application the matter was adjourned on 13 December 2016 and 15 December 2016 for the Applicant to take instructions. At that time, the Court recorded that the learned counsel for the Applicant was not acting on the instructions of the Applicant but his son. Considering these facts Revision Application No.577 of 2016 was dismissed. Thereafter the present Review is filed on the ground that the advocate did not advise the Applicant properly.

4. Such contentions cannot possibly be accepted. As noted in the order dated 19 December 2016, the Applicant had acted on the instructions of the son of the Applicant. Therefore, inspite of giving sufficient opportunities, if the Applicant through his Advocate had taken a particular stand merely because there is change of Advocate, the order passed on 19 December 2016 cannot be reviewed as it was passed by taking into consideration all the factors.

5. However even on 19 December 2016, Court had repeatedly put to the Advocate that Applicant appears to have acted on instructions of sons of the Applicant and had refused even the most reasonable offer of the Respondent of accommodating the Applicant till his

lifetime. It appears that by this Review Application the affidavits of both the sons of the Applicant have been annexed wherein they have stated that they have no intention to retain or claim any right in the suit premises except permitting the Applicant to reside in the suit premises in his lifetime. Further more the learned counsel for the Applicant has handed over the affidavit of the Applicant himself dated 2 February 2017 reiterating that except for the two sons, who have already filed their affidavits, no other person has any concern in respect of the suit property.

6. Therefore, while dismissing the Review Petition, I am of the opinion that time can be granted to the Applicant. Considering the fact that the Applicant is as on date 92 years of age, longer time to vacate the suit premises needs to be granted. Furthermore, requisite affidavits have been filed by all concerned which will adequately protect the interest of the Respondent.

7. Accordingly, it is directed that inspite of the dismissal of the Revision Application and Review Petition the decree will not be executed for a period of two years from today i.e. 22 February 2017. All undertakings given by virtue of the affidavits placed on record are accepted. No third party rights will be created in the suit premises nor the Applicant or any other family member will part with possession of the suit premises.

(N.M.Jamdar, J.)