

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 145 OF 2017**

Kashmira Adi Ichhaporia	...Petitioner
<i>Versus</i>	
Persis Kersap Billimoria & Ors	...Respondents

Mr Amogh Karandikar, *i/b Khandeparkar & Associates, for the
Petitioner.*

Mr Phiroze Colabawalla, *a/w Mr Abhishek Sawant, Mr KK
Billimoria & Khushbu Malviya, i/b M/s Desai & Chinoy, for the
Respondents.*

**CORAM: G.S. PATEL, J
DATED: 14th November 2017**

PC:-

1. It appears that despite previous orders and listings the petition is not yet served. It was listed on 2nd February 2017 having been filed on 2nd September 2016.

2. This, however, is not the only reason to dismiss the Writ Petition. The petitioner is an obstructionist. The 1st respondent was the plaintiff in an ejectment suit to which the 2nd respondent was the sole defendant. The building in question is called Soli Papa Cottage at plot no. 653, A Firdosi Road, Dadar Road, Mumbai 400 014. There is in this building a residential flat on the 1st floor and this is the subject

matter of the suit. The plaintiffs sought possession of this flat on the ground of *bona fide* requirement. During the pendency of the suit the original tenant one Dhan Bamji died and widow Ruby was impleaded by way of amendment. Dhan and Ruby had no children. Ruby died after the suit was decreed but before the execution application pursuant to that decree was filed. The execution application was filed against Ruby although she had apparently passed away shortly before. The petitioner claimed to be residing in the flat and informed the bailiff of Ruby's death and produced a death certificate. She thus obstructed the execution decree. There is a bailiff's report of 22nd December 2016 that makes the most interesting reading. It shows that when the bailiff went to the flat, one Vikrant Prabhakar Patil was in the flat but not the petitioner obstructionist. Vikrant Patil said he was a sub-tenant of the obstructionist and had been there for the last three months. The obstructionist petitioner herself never turned up during the bailiff's visit and Vikrant Patil delivered possession to the bailiff in execution. The bailiff has thereafter on 22nd December 2016 delivered possession to the decree holders.

3. What this petition challenges is an order dated 12th July 2016 of the Appellate Bench of the Small Causes Court at Mumbai which granted a conditional stay on the ejectment decree on the petitioner depositing Rs. 30,000/- per month. It is actually this order of deposit that aggrieves the petitioner. It is hardly surprising to find her absent today since it seems clear to me that the petitioner is little more than taking a chance at the litigation, she already having created a sub-tenancy in the premises and that sub-tenant now having delivered possession to the bailiff. The obstructionist cannot possibly be serious about claiming an inheritance of the tenancy. She herself admits that

the original tenant and his wife were both childless. She says that the original tenant Dhan was her uncle, and that the petitioner looked after the old couple for 25 years and was “like their daughter”. Being “like a relative” does not bring one within the purview of protection under the Rent Act.

4. The Writ Petition is dismissed with no order as to costs. It is made clear that any attempt or application at restoration of this petition on the ground of that the petitioner was absent will not be entertained without an order of significant costs as a pre-condition.

(G. S. PATEL, J.)