

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 13226 OF 2017**

Hazrabi Maan Baig	...Petitioner
<i>Versus</i>	
Parvez Darabshaw Netarwalla & Ors	...Respondents

**Mr SN Vaishnava, a/w Ms Nupur Mukherjee, i/b M/s. NV
Vaishnava & Co, for the Petitioner.**

**CORAM: G.S. PATEL, J
DATED: 6th December 2017**

PC:-

1. The Petitioner assails two orders dated 22nd December 2016 and 27th October 2017 saying that the court below has wrongly declined to pass an order in the Petitioner's favour restraining the Respondents from dispossessing the Petitioner from the premises in question except in accordance with law.

2. Shortly stated, the Petitioner claims to be a heir of the original tenant, one Manchi Darabshaw Netarwalla, in respect of Flat No. 4, Ground Floor, Baria building No. 3, Gamadia Colony, Tardeo, Mumbai 400 007. She filed a declaratory suit being RAD Suit No. 1894 of 2015. She said she was legally wedded wife of the original tenant Manchi. There is some discussion about whether the Petitioner and Manchi Netarwalla had a live-in relationship and

whether Manchi Netarwalla converted to Islam and married the Petitioner. Defendants Nos. 1 to 3 to the suit are the siblings and of Manchi Neterwalla. They say that the Petitioner was never married to him. They say that she was merely a maid servant.

3. As to the question of possession, there is no reason, once there is a pending proceeding about the tenancy, to pass such order. Obviously in the declaratory suit the Petitioner seeks to protect not just her tenancy but her occupation of the premises as a tenant and this is being opposed by the Defendants to that suit. In itself, this does not mean that there should be the kind of injunction against the Defendants that the Petitioner seeks. Indeed the grant of such an injunction might conceivably prejudice the suit and possibly an eviction proceeding if the Defendants decide to initiate it. The courts below *inter alia* observed that there was no reasonable basis for the Petitioner's apprehension. By the order of 27th October 2017, the Appellate Court also declined to appoint a Commissioner for local investigation.

4. I am not able to discern any irregularity, illegality or perversity in either of the impugned orders. Whatever rights the Petitioner seeks or claims, she must establish these in the proceedings she has initiated and she must do so on merits. The Petitioner must establish the case as pleaded namely that she lived with deceased tenant as his wife or at least had a live-in relationship with him. It may noted that the deceased tenant was married to Behroze and had two children by her.

5. There is no question of interference with this impugned orders because to grant the relief the Petitioner wants would be to foreclose the determination of the issues in the suit.
6. The Writ Petition is rejected.
7. No costs.

(G. S. PATEL, J)