

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

**CIVIL APPLICATION NO. 171 OF 2018
IN
APPEAL FROM ORDER NO. 127 OF 2018**

Valerian @ Valu D'Silva	Applicant
Versus	
Veronica Jokim Gomes & Ors.	Respondents

Mr. J.M. D'Silva for the applicant.
Mr. Pradeep R. Kadam for respondent no.1.

CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATE : 26th FEBRUARY, 2018

P.C. :

1. Heard Mr. J.M. D'Silva, learned counsel for the applicant and Mr. Pradeep R. Kadam, learned counsel for respondent no.1.

2. By this application, the applicant herein who is the original defendant no.2 in Special Civil Suit No.1134 of 2017 filed by the respondent no.1-Veronica Jokim Gomes under section 6 of Specific Relief Act before Bombay City Civil Court at Bombay, has sought stay of the impugned order dated 29th January, 2018 in Notice of Motion No. 1870 of 2017 in Special Civil Suit No. 1134 of 2017.

3. The records reveal that the respondent no.1-Veronica had filed an RAE & R Suit No.666/1784 of 1986 against the respondent no.2-Lawrence, the father of the applicant, for eviction / vacating Room

No.1 situated at Veronica J. Gomes Chawl, Upper Kanjur Marg (E), Mumbai – 400 042 for non-payment of rent, etc. The said RAE & R Suit No.666/1784 of 1986 was decreed on 22nd July, 2004 and the respondent no.2-Lawrence was directed to vacate the room and handover possession of the room to the respondent no.1. The Appeal No.722 of 2004 filed against the said judgment and decree was dismissed on 29th June, 2013 and the Civil Revision Application No.687 of 2013 was dismissed by this Court on 28th January, 2014.

4. This Court had granted twelve weeks time to the respondent no.2-Lawrence to vacate the said premises on filing of an undertaking. Accordingly, the respondent no.2-Lawrence had filed an undertaking in this Court stating that he would handover the possession of the said room within twelve weeks and pay arrears of rent within four weeks. The respondent no.2-Lawrence thereafter, filed a Special Leave Petition No.9102 of 2014 before the Apex court. The same was dismissed on 15th April, 2014. However, time to vacate the premises was extended till 31st July, 2014.

5. Failure of the respondent no.2-Lawrence to comply with the undertaking and/or to abide by the order of the Court, necessitated the respondent no.1 to file Execution Application No.460 of 2014. The records reveal that the warrant of possession was issued and the same was executed by the bailiff on 05th February, 2015. A perusal of the bailiff report dated 05th February, 2015 reveals that the applicant herein who is the son of respondent no.2 had handed over possession

of the suit premises and the bailiff in turn had put the respondent no.1-Veronica in possession of the said premises.

6. The grievance of the respondent no.1/original plaintiff is that on 26th March, 2017, the applicant and his father & brother being respondent nos.2 and 3 forcibly entered the suit premises. The respondent no.1 filed a complaint before Kanjurmarg Police Station and since the police did not take cognizance of the same, he addressed a complaint to the Deputy Commissioner of Police as well as to the Home Minister.

7. A perusal of the records *prima facie*, reveals that the respondent no.1-Veronica was put in possession of the suit room on 05th February, 2015 by virtue of the Court order. The material on record further reveals that on 26th March, 2017, the applicant and the respondent nos.2 and 3 had taken forcible possession of the suit room.

8. It is to be noted that the applicant does not dispute that he is in possession of the suit room. The contention of Mr. J.M. D'Silva, the learned counsel for the applicant is that the suit premises was demolished by the Corporation and thereafter, with the permission of respondent no.4-Mrs. Winie, he has re-constructed the premises and that he is occupying the said premises with the permission of respondent no.4. It may be mentioned that notice of demolition issued by Municipal Corporation of Greater Mumbai (for short 'MCGM') is not in respect of the entire structure but only in respect of the alleged

extended portion of the structure. Thus, there is no *prima facie* material on record to indicate that the MCGM had demolished the entire structure i.e. the suit premises. Furthermore, the applicant has not been able to place before this court any construction license issued to him by MCGM or any permission granted to him by respondent no.4-Mrs. Winie to construct the premises and to occupy the premises.

9. The material on record *prima facie*, indicates that the respondent no.1 was put in possession of the said room by order of the Court. There is nothing on record to indicate that she had vacated the suit premises or surrendered the possession of the suit room so as to enable the respondent no.4-Mrs. Winie to induct the applicant/appellant herein in the suit premises. The material on record *prima facie* reveals that the applicant has taken forcible possession of the said room, and has thereby tried to frustrate and defeat the order of the Court.

10. Under the circumstances, the applicant has not made out any case to stay the operation, implementation and/or execution of the impugned order. Hence, the civil application is dismissed. Interim reliefs granted earlier stands vacated. At this stage, the learned counsel for the applicant/appellant submits that the order may be stayed for a period of four weeks. Request is rejected.

(SMT. ANUJA PRABHUDESSAI, J.)