

Anand

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

WRIT PETITION NO. 2804 OF 2018

Vimal Mahadev Kadam

.Petitioner

Vs.

Laxmibai Krishna Kadam & ors.

.Respondents

Mr. S. Ghogare a/w Ms A. Patil, Advocate, for the Petitioner

Mr. A. Kharatmol, Advocate, for the Respondent No. 1

Mr. S. D. Rayarikar, AGP, for the Respondent Nos. 2 & 3 – State

CORAM : REVATI MOHITE DERE, J.

DATE : 12.10.2018

P.C.

. Heard learned counsel for the parties.

2. By this Petition, the Petitioner, who is the daughter-in-law of the Respondent No. 1 – Laxmibai Kadam, has impugned the order dated 17.01.2018 passed by the Presiding officer (Appeals), (Parents and Senior Citizen Maintenance and Welfare Tribunal), Collector Office, Mumbai.

3. Mr. Ghogare, learned counsel for the Petitioner

submits that the Petitioner has been staying in the premises in question, being Room No. 13/22, B. D. D. Chawl, N. M. Joshi Marg, Mumbai – 400 013 (hereinafter referred to as “the said premises”), since 1989 i. e. since her marriage and as such the said premises is her matrimonial home. He states that in 2008, with the consent of the Respondent No. 1, the room was transferred by the Respondent No. 1 in the Petitioner's name and as such, the room stood in her name. He submits that the Petitioner is a widow, her husband – Mahadev Kadam having expired in 2004; and that the Petitioner has no place of her own or where she can go. He further submits that the Petitioner is ready and willing to look after the Respondent No. 1 and perform all her obligations / duties.

4. Learned counsel for the Respondent No. 1 submits that the Respondent No. 1 is aged 87 years and that the said premises / room belongs to the Respondent No. 1. He submits that as the Petitioner was not taking care of the Respondent No. 1, the Respondent No. 1 was constrained to file a Complaint / Application before the Competent Authority / Tribunal. He

submits that the Respondent No. 1 wants to stay in her own house without any interference from any relatives / family members. He further submits that despite the direction given by this Court vide order dated 12.04.2018 directing the Petitioner to deposit Rs. 5,000/- per month, the same has not been deposited by the Respondent No. 1 till date. Learned counsel for the Petitioner disputes the said statement.

5. Perused the papers including the impugned order dated 17.01.2018 passed by the Presiding officer (Appeals), (Parents and Senior Citizen Maintenance and Welfare Tribunal). According to the learned counsel for the Petitioner, the Petitioner is a widowed daughter-in-law of the Respondent No. 1; that the Petitioner was married to the Respondent No. 1's son i. e. Mahadev Kadam in 1989 and that after marriage, the Petitioner started residing in the said premises alongwith her husband and in-laws and; that in 2004, the Petitioner's husband expired. It is submitted that said the premises, being Room No. 13/22, B. D. D. Chawl, N. M. Joshi Marg, Mumbai – 400 013 is the Petitioner's matrimonial home. According to the learned counsel for the

Petitioner, the tenanted room stood in the Petitioner's father-in-law's name and that after his demise, the said tenanted premises was transferred in the Respondent No. 1's name.

6. It appears that in 2008, the said premises was transferred by the Respondent No. 1 in the Petitioner's name and as such, the Petitioner, the Respondent No. 1 and another daughter-in-law of the Respondent No. 1 also a widow were staying in the said premises / room. It appears that due to ill-treatment / harassment by the Petitioner, and as the Petitioner allegedly cheated the Respondent No. 1, by getting the premises transferred in the Petitioner's name, the Respondent No. 1 filed a complaint on 01.06.2017, as against the Petitioner before the Respondent No. 2, under the Maintenance and Welfare of Parents & Senior Citizen Act, 2007. On receipt of summons, the Petitioner approached the Tribunal and filed her reply. The Respondent No. 2 vide order dated 17.01.2018 directed the Director, B. D. D. Chawl, N. M. Joshi Marg, Mumbai – 400 013 to delete the name of the Petitioner from the rent receipts and directed that the Respondent No. 1's name be replaced on the rent receipts within

30 days. The Tribunal also directed the Petitioner to handover the room to the Respondent No. 1 within 30 days. Being aggrieved by the said order dated 17.01.2018, the Petitioner has filed the aforesaid Petition.

7. Considering the relations between the parties and in order to explore the possibility of an amicable settlement, the matter was kept in the chamber on 11.10.2018. The Respondent No. 1 - Laxmibai Kadam was vehement that she wanted to live on her own, in her premises / room and did not want to be dependent on any of her relatives / family members and that she did not want to live with any of her family members. The Respondent No. 1 refuted the Petitioner's allegation that the Petitioner's daughter and son-in-law i. e. Respondent No. 1's grand daughter and her husband were instigating the Respondent No. 1 and had got the premises transferred on their name, and stated that she had not done so and that she was willing to give an Affidavit that she had not transferred the premises in anyone's name nor did she intend to do so in future during her life time. Accordingly, later in Court, the Respondent No. 1 tendered her

Affidavit-cum-undertaking. The same was taken on record on 11.10.2018. The Petitioner had also stated that she, being a widow has no shelter and that there is no alternate accommodation where she can live. She further stated that she too had a right in the said tenanted premises by virtue of being a daughter-in-law of the Respondent No. 1. She states that she is ready to make a statement that she will not enter the premises during the life time of the Respondent No. 1, unless called for by the Respondent No. 1 or exigencies of the situation so arise or if there is an amicable settlement. As noted earlier, on 11.10.2018, the Respondent No. 1 tendered her Affidavit-cum-undertaking which was taken on record and marked as "X" for identification. In the said Affidavit-cum-undertaking in Clause (3), the Respondent No. 1 has stated that she has not created and will not create any third party rights in the premises in connection with Room No. 13 / 22, B. D. D. Chawal, N. M. Joshi Marg, Mumbai – 400 013, which is standing in her name, during her life time. In fact, she has also stated that she will not allow any family members to stay with her during her life time. It is not in dispute that the premises in question is a tenanted premises which earlier

stood in the name of the Respondent No. 1's husband and after his demise was transferred in the name of the Respondent No. 1. It is also not in dispute that the Petitioner, one of the daughter-in-laws of the Respondent No. 1 is a widow. It also appears that in 2008, the Respondent No. 1 transferred the said tenancy in the name of the Petitioner, which according to the Respondent No. 1, was transferred by the Petitioner, by allegedly cheating her. It appears that in 2017, the Respondent No. 1 approached the Tribunal and filed proceedings under the Maintenance and Welfare of Parents & Senior Citizen Act, 2007, alleging ill-treatment and harassment at the hands of the Petitioner. During my interaction with the Respondent No. 1, I found the Respondent No. 1 to be sharp and aware of what was happening. She expressed her desire to stay on her own and did not want to be dependent on or at the mercy of any family member. The Respondent No. 1 gets monthly pension. The Respondent No. 1 was emphatic about staying by herself and managing on her own without interference of any family members. By the impugned order, the Tribunal had directed the Director, B. D. D. Chawal, N. M. Joshi Marg, Mumbai – 400 013 to transfer the rent receipts back in the name of the Respondent No.

1, by deleting the Petitioner's name. It is informed that the same has already been carried out and as such, presently, the rent receipts stand in the name of the Respondent No. 1.

8. No infirmity can be found in the impugned order, passed by the Presiding officer (Appeals), (Parents and Senior Citizen Maintenance and Welfare Tribunal), Collector office, Mumbai, warranting any interference in the same. The Affidavit-cum-undertaking is already on record and as such, the said Affidavit-cum-undertaking takes care of the rights of the Petitioner. The impugned order does not take away the Petitioner's right in the property, which she may have, in law. The Petitioner's statement that she will not enter the said premises during the life time of the Respondent No. 1, unless called for by the Respondent No. 1 or there is an amicable settlement between the parties or exigencies of the situation so arise, is accepted.

9. As far as the order dated 03.04.2018 directing the Petitioner to pay the Respondent No. 1 a sum of Rs. 5,000/- per month as compensation until further orders is concerned, the

Petitioner has already deposited a sum of Rs. 30,000/- in the Registry of this Court. Learned counsel for the Petitioner states that the Petitioner has deposited Rs. 30,000/- till date in the Registry of this Court and that the Petitioner will deposit additional Rs. 5,000/- directly in the Registry of this Court on 15.10.2018. Statement accepted. Registry on an Application being made by the Respondent No. 1, to transfer the entire amount of Rs. 35,000/- so deposited alongwith accrued interest, if any, directly into the account of the Respondent No. 1. The details of which are as under :-

Name of Bank : **Solapur Janata Sahakari Bank Limited**

IFSC Code : **SJSB00000018**

Home Branch : **Mumbai (587018)**

Branch Address : **N. M. Joshi Marg,
Shop Nos. 3 and 4
Mumbai – 400 013
02223010592**

Customer No. : **948812**

Account No. : **5870182000011355**

Name : **KADAM LAXMIBAI KRISHNA**

10. The payment of compensation of Rs. 5000/- was an interim arrangement. Now that the order of the Tribunal is confirmed, the Petitioner will not be required to pay compensation as directed by this Court vide order dated 03.04.2018. The Petitioner undertakes to handover possession of the premises to the Respondent No. 1 on **22.10.2018 at 11.00 a. m.** Considering what has been stated, no action be taken as against the Petitioner for handing over the possession of the premises belatedly to the Respondent No. 1, having regard to the fact, that the aforesaid Petition was pending before this Court and that there was an ad-interim stay granted by this Court. Needless to state, at the cost of repetition, that neither the impugned order nor this order, in any way take away the right of the Petitioner in the said premises, if she is so entitled to in law.

11. The Petition is disposed off on the aforesaid terms.

12. To be listed on the **Supplementary Board** on **24.10.2018** under the caption "*For recording compliance of the order*".

All concerned to act on the authenticated copy of this
order.

(REVATI MOHITE DERE, J.)