

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

**INTERIM APPLICATION NO.19100 OF 2022
IN
CIVIL REVISION APPLICATION NO.282 OF 2021**

Kapil Bacharam Sharma (deleted since deceased) through his LRs.

1(A) Smt. Sheiladevi Kapil Sharma and
Ors.

...Applicants

Versus

Haji Mohamed Rashid Jitekar (deleted since deceased) through his LRs.

1(a) Mohamed Ebrahim Jitekar and
Ors.

...Respondents

...

Ms Anupama Shah with Ms Mitaali Shah i/b. Mr. Vaibhav Mehta and Associates for the Applicant.

Mr. Reshant Shah i/b. M/s. Lex Conseiller for the Respondents.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 17th OCTOBER, 2022.

P.C. :-

1. By this application, the Applicants seek time to vacate the premises and further seek stay of the execution and implementation of the decree dated 16/03/2020 passed by the Appellate Bench of the Small Causes Court in Appeal Nos.7 of 2013 and 8 of 2013 pending hearing and final disposal of the Civil Revision Application.

2. The Respondent Nos.1 to 3, who are the owners of the suit premises had filed a suit for eviction in the year 1998. The said suit was decreed in the year 2013. The Appeals filed by the Applicants before the Appellate Bench of the Small Causes Court were dismissed on 16/03/2020. Since the Applicants herein did not vacate the premises the Respondent No.1A filed execution application on 04/02/2021 before the Small Causes Court at Mumbai. It is only after filing of this application that the Applicants, about 8 months from the date of dismissal of the appeal, filed revision applications before this Court being Civil Revision Application Nos.282 of 2021 and 210 of 2021 challenging the eviction decree dated 30/01/2013 and order of the Appellate Court dated 16/03/2020.

3. During the pendency of the aforesaid revision applications warrant of attachment came to be issued on 29/03/2022. The Applicants challenged the order of issuance of warrant of attachment by filing Revision Application No.389 of 2022 before the Appellate Bench of the Small Causes Court.

4. By order dated 26/07/2022 this Court (Coram : Nitin W. Sambre, J.) dismissed both the revision applications filed by the Applicants challenging the eviction decree. Even after dismissal of the

revision applications, the Applicants proceeded with the Revision Application No.389 of 2022 filed before the Appellate Bench of Small Causes Court challenging the issuance of warrant of attachment. The said revision application came to be dismissed on 25/07/2022.

5. Though the Applicants have sought stay of execution and implementation of the impugned judgment dated 30/01/2013, pending hearing and disposal of the civil revision application, learned counsel for the Applicants concedes that as on date no civil revision application is pending before this Court, hence, there is no question of staying the judgment in terms of prayer clause (b).

6. As regards grant of time to vacate the premises, it is seen that the suit filed in the year 1998 was decreed in the year 2013. The eviction order was confirmed by the Appellate Court and the revision applications have been dismissed by this Court vide order dated 26/07/2022. No stay was granted in Revision Application Nos.210 of 2021 and 282 of 2021. Instead of vacating the premises, the Applicants pursued the Revision Application No.389 of 2022 filed before the appellate Bench of the Small Causes Court challenging the issuance of warrant of attachment. It is only after dismissal of the said revision application that the Applicants have approached this Court

once again seeking extension of time to vacate the premises.

7. The Applicants had sufficient time to make alternate arrangement. Instead, the Applicants have made every possible attempt to frustrate the decree. Considering the above facts and circumstances I am inclined to grant three months time to the Applicants to vacate the premises subject to condition that the Applicants shall file an undertaking before this Court within one week not to transfer, alienate or create third party rights in respect of said premises during the period of these three months. The Applicants shall also deposit before this Court an amount of Rs.1,00,000/- within a period of four weeks which shall be forfeited in favour of the Respondent in the event the Applicants fail to vacate the premises within a period of three months.

8. The application stands disposed of in above terms.

9. The Respondent is at liberty to proceed with the execution proceedings in the event the Applicants fail to deposit the amount of Rs.1,00,000/- within the stipulated time.

(SMT. ANUJA PRABHUDESSAI, J.)