

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3993 OF 2023

Preeti Achal Pande.

...Petitioner.

Versus

Achal Saran Pande.

..Respondent.

Mr. Ammaar Sariya i/b Ms. Lubana Ansari for the petitioner.
Ms. Pooja Jalan for the respondent.

Coram : Sharmila U. Deshmukh, J.

Date : July 4, 2023.

P. C. :

1. Heard.

2. By this petition, the challenge is to the order dated 13th February 2023 passed by the Family Court at Bandra, Mumbai in Interim Application No.32 of 2023. The said application was filed by the petitioner–wife seeking direction to the respondent–husband to continue the accommodation where she and the minor son were residing or to provide her similar suitable accommodation. The admitted position being that the accommodation where the petitioner-wife is presently residing was acquired on leave and licence basis, the term whereof had expired on 28th February 2022. The Family Court rejected the application and directed the petitioner-wife

to vacate the rented house by the end of March 2023. By the impugned order dated 13th February 2023, the family Court directed the respondent–husband to provide 2 BHK house on rent to the petitioner in decent vicinity of Santacruz, Vile Parle or Andheri within 15 days from the date of order. In compliance of the order passed by the Family Court, the respondent – husband has acquired the premises admeasuring 780 sq. feet in Andheri, being flat no.201, 2nd floor of building known as Ankur Apartment, Andheri West, Mumbai on payment of deposit of Rs.2 lakh and licence fees of Rs.60,000/- per month. The leave and licence agreement is executed on 4th March 2023 to enable the petitioner – wife to shift to the new accommodation. In spite of the agreement been executed for the purpose of accommodation of petitioner-wife and the minor child, the petitioner-wife has refused to vacate the premises where she is presently residing and to shift to the newly acquired licenced premises. As a result, since March 2023, the respondent-husband is paying the monthly licence fees of Rs.60,000/- and the flat is lying vacant.

3. Learned counsel for the petitioner submits that the flat which has been acquired by the respondent-husband is of smaller area and is not in decent vicinity. He would further submit that it is wife's

insistence that the premises be acquired in Santacruz as the school of minor child is situated in Santacruz. He would further submit that by the interim orders dated 20th July 2022 and 26th April 2022, the Family Court had directed the respondent-husband to pay the rent of premises where the wife was presently was residing and to produce the receipts. He would urge that the impugned order has been passed by disregarding the interim orders. He would further submit that contention of the respondent-husband that 7 properties were shown is incorrect and in fact the list which is annexed at page no.388 does not contain any details of those properties.

4. *Per contra*, learned counsel for the respondent has pointed out that the area of the premises which is now acquired on leave and licensee basis is more than the area of the premises in which the petitioner is presently residing. She would further submit that since 2018, the respondent-husband is residing at Lucknow, which contention is disputed by learned counsel for the petitioner. She would further contend that the interim orders are now merged in the impugned order and, as such, no reliance can be placed on the interim orders.

5. Considered the submissions of parties.

6. The interim application taken out by the landlord seeking intervention is dismissed by this Court. The landlord upon expiry of leave and licence agreement has refused to renew the licence agreement and has called upon the petitioner and the respondent to vacate the premises. Considering that the landlord cannot be compelled to continue with the agreement and by reason of the matrimonial dispute, rights of the third party in their property cannot be impeded.

7. The Family Court had directed the respondent-husband to provide an alternate accommodation of 2 BHK on rent in the decent vicinity of Santacruz, Vile Parle or Andheri within 15 days from the date of order. The respondent- husband has shown his *bonafide* and has acquired a flat at Andheri and is even paying the monthly compensation of Rs.60,000/- since March 2023, however, the petitioner-wife has refused to vacate the premises and refused to shift to the alternate accommodation thereby resulting in the rights of landlord in his own property being prejudiced. The conduct of the wife cannot be said to be above board inasmuch as in spite of the specific order to vacate the premises and without any stay obtained in her favour, she continues to reside in the premises.

8. Learned counsel for the respondent-husband has pointed out that the newly acquired premises is equi-distant from the school in which the minor child is studying and, as such, there will no discomfort caused to the child as far as the schooling is concerned. It appears that the petitioner does not want to comply with the order of Family Court and is adamant in retaining the premises which were obtained on leave and licence basis, term of which has already expired. The effect is to drive the third party-landlord to adopt legal remedies for eviction. This is in spite of the fact that order of the Family Court directs the wife to vacate the premises.

9. Considering the conduct of wife, no indulgence can be shown inasmuch as the respondent-husband has already acquired a premises way back in March 2023 and in spite of 4 months thereafter the petitioner-wife refuses to vacate the premises in question. This will lead to nothing but further litigation to be defended by the husband in the eviction proceeding for which the expenses will have to be again borne by the respondent-husband.

10. In view of the above, especially when no case has been demonstrated by the petitioner-wife as to why the said premises

which have been newly acquired on leave and licence basis is unsuitable for her residence, I am not inclined to interfere with the impugned order. The writ petition being devoid of merits, stands dismissed.

[Sharmila U. Deshmukh, J.]