

Dusane

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

**CIVIL REVISION APPLICATION NO.202 OF 2023
WITH
INTERIM APPLICATION NO.3503 OF 2023**

Bee Mohammed Fatima	...Applicant/ Ori. Defendant
V/s.	
Mr. Khalil Ahmed Fazandar & Ors.	...Respondent/ Ori. Plaintiff (deleted since deceased)
1A) Naushin Khalil Fajandar, wife of Late Respondent & Ors.	...Respondents
Mr. M.A. Vaid a/w Ms. Vidhya N. Shet i/by Vaid & Associates for Applicant.	
Mr. Mohanish S. Ghatge for Respondents.	
Mr. Qureshi Salim Mohammed Umar, C.A. of the Applicants present.	

CORAM: MADHAV J. JAMDAR, J.
DATE: 16th June 2023

P.C.:

- 1.** Heard Mr. Vaid alongwith Ms. Vidhya N. Shet, learned Counsel appearing for the Applicant and Mr. Ghatge, learned Counsel appearing for the Respondents.
- 2.** The challenge in this CRA is to the legality and validity of the judgment and decree dated 16th February 2023 passed by

the learned Appellate Bench of Small Causes Court, Mumbai in (A-1) Appeal No. 422 of 2015 as well as to the judgment and decree dated 30th September 2015 passed by the learned Judge, Small Causes Court, Mumbai in R.A.E. Suit No. 624/931 of 2009.

3. The learned Trial Court has decreed the suit on the ground of bonafide requirement. The learned Appellate Court confirmed the decree on the ground of bonafide requirement and also granted decree on the ground of subletting.

4. Learned Counsel appearing for the Applicant argued Civil Revision Application for some time. However, when this Court expressed that the decree passed by both the Courts is on the basis of material on record and therefore the Civil Revision Application deserves to be dismissed, learned Counsel appearing for the Applicant on the instructions of Mr. Qureshi Salim Mohammed Umar i.e. the constituted attorney of the Applicant Bee Mohammed Fatima gave instructions to withdraw the Civil Revision Application.

5. The said Qureshi Salim Mohammed Umar, who is personally present in the Court stated that the instructions to withdraw the CRA has been given by him as constituted attorney of Bee Mohammed Fatima i.e. the Applicant as well

as on his own behalf.

6. In view of above certain facts are relevant. As far as ground of subletting is concerned, it is specifically mentioned in the plaint that the present Applicant i.e. the Defendant-Bee Mohammed Fatima has shifted to her hometown at Bangalore about 3 years back and has subletted the suit premises to some third party. The said suit was filed in 2009. Therefore in effect which it is the contention of the Respondent-Plaintiff, that the said Applicant has shifted to Bangalore permanently in or about 2006. In the said suit, the written statement was filed by the Applicant i.e. the Defendant Bee Mohammed Fatima through her constituted attorney i.e. Qureshi Salim Mohammed Umar. In the said written statement in paragraphs 5 and 6, it has been denied that the Defendant has left for Bangalore or Mangalore about 3 or 4 years ago and that the Defendant continues to be in possession of the suit premises.

7. It is significant to note that the Defendant has not entered into the witness box and the evidence has been led on behalf of the Defendant by her constituted attorney said Qureshi Salim Mohammed Umar. It is further significant to note that in the cross-examination, the said constituted attorney has admitted that the Defendant resides at

Mangalore and she left Mumbai in or about 2007-2008. The relevant portion of the cross-examination is reproduced hereinbelow for ready reference:

"R.A.E. Suit No.624/931 of 2009
Plaintiff present.
Shri. Vaid, Advocate for D.W. 1 present.

D.W.1 Qureshi Salim Mohammed Umar on S.A.

Cross examination of D.W.1 on fresh oath by Shri. S.J. Ghatge, Advocate for the Plaintiff.

"I am acquainted with defendant since my childhood as husband of defendant was friend of my father. I educated a study of graduation in commerce faculty. I completed my graduation in the year 1998. Presently I reside at 306, K.D. Tower, Nagpada, Mumbai East. Since last one year, I am residing there at and prior to that, I was residing at 11, Bora Estate, First Floor, Nal Bazar, Mumbai. I was residing there since my childhood up to last year. **Defendant presently reside at Mangalore she left Mumbai probably in the year 2007-2008. Defendant left along with her husband, her children i.e. her two sons reside at abroad.** Witness volunteers that defendant used to visit Mumbai frequently. I cannot tell the exact address of defendant of Mangalore. The defendant did nothing there at and her husband is also retired. Suit premises was let out to defendant for business purpose. **Presently myself alongwith some staff members are looking after said business. I handling the business of defendant since the year 2009 onwards. There is no agreement in between myself and defendant regarding handling her business.**"

(Emphasis added)

8. Thus, this is the case where the Defendant as well as her constituted attorney who has verified the written statement has come out with totally false case in the written statement. However,

as the Applicant i.e. original Defendant as well as her constituted attorney Mr. Qureshi Salim Mohammed Umar have decided to accept the eviction decree and withdrawing the CRA, the said withdrawal is allowed and CRA is dismissed.

9. Learned Counsel appearing for the Applicant submitted that the Applicant i.e. the Defendant has shifted to Mangalore in or about 2007 and the constituted attorney Qureshi Salim Mohammed Umar is exclusively in possession of the suit premises since then. It is submitted by the learned Counsel appearing for the Applicant that the said constituted attorney Mr. Qureshi Salim Mohammed Umar will handover the possession of the premises to the Respondent on or before 30th June 2025. The said constituted attorney Mr. Qureshi Salim Mohammed Umar is present in the Court and his written affidavit-cum-undertaking dated 15th June 2023 is tendered in Court. The said undertaking is taken on record and marked 'X' for identification. The said undertaking reads as under:

"AFFIDAVIT CUM UNDERTAKING

I, Qureshi Salim Mohammed Umar, the constituted attorney of the Appellant, aged 46 years, having address at Shop No. 5-E, Mezzanine Floor, Fazandar Chambers, 25, Masjid Cross Lane, Mumbai- 400 003, do hereby solemnly affirm as under:

1. I say that **I am giving this undertaking for and on behalf of the Applicant- Bee Mohammed Fatima and myself** being constituted attorney of the Defendant before this Hon'ble Court.
2. **The Appellant and myself her Constituted attorney undertake to vacate and handover quiet, vacant and peaceful**

possession of the suit premises on expiry of period of 2 (two) years to the Respondents from the date of order of this Hon'ble Court to that effect.

3. I and Appellant undertake to abide by all such terms and conditions as may be imposed by this Hon'ble Court.

Solemnly affirmed at Mumbai,)
This 15th day of June, 2023)
Identified by me,)

Advocates for the Appellant

(Emphasis added)

10. Mr. Qureshi Salim Mohammed Umar, constituted attorney of the Applicant also personally gives undertaking to the Court that he will vacate the suit premises on or before 30th June 2025 and handover possession of the same to the Respondent. Mr. Qureshi also states that he will pay Rs.10,000/- per month (i.e. the amount of compensation fixed by the Appellate Court during the pendency of the appeal) plus Rs.150/- towards standard rent to the Respondent No. 1A Naushin Khalil Fajandar on or before 10th day of each month. The said undertaking given personally by Qureshi Salim Mohammed Umar is accepted as undertaking given to this Court.

11. For the above reasons, the CRA is dismissed as withdrawn.

However, the Applicant-Bee Mohammed Fatima as well as constituted attorney of the Applicant i.e. Qureshi Salim

Mohammed Umar are granted time to vacate the suit premises on or before **30th June 2025**.

12. It is made clear that if the Applicant as well as her constituted attorney, Qureshi Salim Mohammed Umar fails to abide the undertaking given to this Court, then in addition to the other actions, both of them will be liable for action of contempt.

13. It is made clear that if the Applicant as well as said Qureshi Salim Mohammed Umar, constituted attorney of the Applicant fails to vacate the suit premises on or before 30th June 2025, then the Applicant is at liberty to file an appropriate Interim Application in this CRA for appointment of Court Receiver and for taking possession from the Applicant or said constituted attorney Mr. Qureshi Salim Mohammed Umar.

14. The Civil Revision Application is dismissed, subject to above. In view of disposal of the CRA, nothing survives in the Interim Application, the same is also dismissed.

(MADHAV J. JAMDAR, J.)

Note : This order is modified as per order dated 22nd June, 2023. The correction is shown in paragraph 11 in bold.