

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.14329 OF 2023
IN
WRIT PETITION NO.8423 OF 2019

Sandeep Todi

Applicant

.. (Org. Respondent No.2)

IN THE MATTER BETWEEN:

Khemraj G. Todi

.. Petitioner

Versus

Neha S. Todi and Ors.

.. Respondents

-
- Mr. Sandeep Todi, Applicant in Interim Application No.14329 / 2023 Respondent No.2 present in-person
 - Ms. Kokila Kalra, Advocate for Respondent No.1
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CORAM : MILIND N. JADHAV, J.

DATE : DECEMBER 13, 2023

P.C.:

1. Heard Mr. Todi, Applicant in-person in Interim Application No.14329 of 2023 / Respondent No.2 and Ms. Kalra, learned Advocate for Respondent No.1.

2. The Applicant is Respondent No.2 in the original Writ Petition No.8423 of 2019. The original Writ Petition has been filed maintaining a challenge to the twin orders dated 18.08.2018 passed by the SDO under section 5 and subsequent order dated 27.11.2018 passed by the Additional Collector, Mumbai in appeal proceeding under the provisions of Maintenance and Welfare of Parents and Senior Citizen Act, 2007 by the father-in-law against the Respondent

No.1 i.e. daughter-in-law.

3. Admittedly, Respondent No.1 and Respondent No.2 i.e. Applicants are wife and husband before me and they have two children. The orders under challenge in the Writ Petition are passed against the father-in-law who is the first holder of the subject flat namely flat No.1501, in Building Octacrest, Lokhandwala Complex, Kandivali (East), Mumbai. The second holder of the flat is the Applicant i.e. Respondent No.2 (husband) before me.

4. The present Interim Application No.14329 of 2023 is filed for review of the order dated 02.03.2023 passed by this Court while admitting Writ Petition and directing the Petitioner and Respondent Nos.1 and 2 i.e. parties before the Court to maintain *status quo* as on the date of passing of the order in respect of the subject flat.

5. Review of the order has been sought by the Applicant – Respondent No.2 on the ground that by the said order *status quo* which is granted is being misused by the Respondent No.1 (wife) in other parallel proceedings between Respondent Nos.1 and 2.

6. I am unable to understand as to how an order which grants *status quo* in respect of the subject flat directing all parties to the Writ Petition can be misused. Mr. Todi, the Applicant is also unable to decipher the nature of misuse of the order of *status quo*. Nevertheless I have heard Ms. Kalra appearing for Respondent No.1 and she would

submit that Respondent No.1 has not misused the said order of *status quo* before any forum as alleged. Infact she would submit that Respondent No.1 wife shall not misuse the said order if it is so alleged. Being a responsible Officer of the Court and Advocate practicing in this Court, I accept the statement made by Ms. Kalra.

7. Next submission advanced by Mr. Todi i.e. Applicant (husband) before me is that he being the second holder of the subject flat at present stands ousted from the flat property because admittedly at the time when the order was passed, the Respondent No.1 (wife) alongwith their two children was residing in the said flat. At the then time, Petitioner in the Writ Petition namely the father-in-law who is the first holder of the flat and his wife (mother of Applicant) were both residing with his younger brother and the same position continues till date. The Applicant – Respondent No.2 was at the then time admittedly not residing in the subject flat as also not residing with his father and mother. This was the position that existed on 02.03.2023 and hence the order of *status quo* was passed.

8. There has been a subsequent event which has transpired and both the parties have informed it to me across the bar. Mr. Todi, the Applicant (husband) would submit that pursuant to passing of the order of *status quo* on 02.03.2023, the Respondent No.1 shifted / has moved to Kolkata alongwith their two children. This submission is

strongly refuted by Ms. Kalra. According to her, the Respondent No.1 (wife) though shifted with her two children to Kolkatta, she herself regularly keeps visiting the subject flat in Mumbai and resides there since several substantive proceedings are pending and going on between the parties in the Family Court, in the Criminal Court as well as this Court. Mr. Todi would submit that the flat is kept locked and his wife does not visit Mumbai and her cases are looked after by her Advocate.

9. In course of his submissions Mr. Todi, the Applicant has referred to and relied upon the following decisions in support of his submissions:-

(i) *Nair Service Society Ltd. V/s. K. C. Alexander and Ors.*¹

(ii) *Padhiyar Prahladi Chenaji (Deceased) through L.R.s V/s. Maniben Jagmalbhai (Deceased) through L.R.s. and Ors.*²

(iii) *Maria Margadia Sequeria V/s. Erasmo Jack De Sequeria*³ ; and

(iv) *Sumit Vijay Kumar V/s. Shraddha Gupta Jain*⁴.

1 (1968) 3 SCR 163

2 Civil Appeal No.1382 of 2022 passed by Supreme Court.

3 2012 (5) SCC 370.

4 Writ Petition No.7175 of 2017 passed by Bombay High Court on 13.04.2018.

10. He would submit that proposition laid down in the above judgments is that right of the party who is holder of the immovable property and is the true owner of property cannot be impinged upon by granting an order of injunction or order of *status quo* by the Court.

11. In the facts of the present case, he would submit that considering that he is a joint holder of the subject flat alongwith his father i.e. Petitioner, the order of *status quo* which has been granted by the Court directly affects him and therefore seeks vacating of the order of the *status quo*.

12. Considering the facts in the present case, I am not inclined to accept the submissions made by Mr. Todi, the Applicant in view of the fact that at the then time Respondent No.1 (wife) was not only residing in the flat alone but also alongwith their two children.

13. In the above facts and circumstances, no ground whatsoever is made out for review of the order dated 02.03.2023 admitting the Writ Petition filed which is passed by giving cogent reasons which existed at the then time and were recorded by the Court. No error apparent on the face of record of the said order is pointed out by the Review Applicant.

14. Considering the fact that Writ Petition has been expedited the parties shall be at liberty to approach the regular Court holding the roster for early hearing of the Writ Petition.

15. No interference is called for review of the order dated 02.03.2023.

16. Interim Application No.14329 of 2023 is dismissed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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Date: 2023.12.23
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