

Arjun

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

**CIVIL REVISION APPLICATION NO.544 OF 2019
WITH
CIVIL APPLICATION NO.367 OF 2019
IN
CIVIL REVISION APPLICATION NO.544 OF 2019**

Clarence Anthony Pareira @ Peter Pareira ...Applicant

V/s.

Norysca Wassoodew & Ors.

...Respondents

Mr. G. N. Salunke i/b S. K. Rai, for the Applicant.

Mr. Vivek Walawalkar a/w Vijaya Ingole, Rupesh Mandhare & Tanmay Karmarkar, for Respondent Nos.1 to 3.

**CORAM : MADHAV J. JAMDAR, J.
DATED : JULY 21, 2023**

P.C.:

1. Heard Mr. Salunke, learned counsel appearing for the Applicant and Mr. Walawalkar, learned counsel appearing for Respondent Nos.1 to 3.

2. The factual position which has come on record is shocking. The eviction suit was filed against one Mary Pareira (Defendant No.1) and her son Peter Pareira (Defendant No.2) regarding the suit premises under the

provisions of the Maharashtra Rent Control Act, 1999. Said Defendant No.2, Peter Pareira is the present Applicant. It has further come on record that the suit premises which are the tenanted premises of Defendant No.1-Mrs. Mary Pareira are mortgaged with various Banks including L.I.C. Housing Finance Ltd., State Bank of Travancore and Citizencredit Co-operative Bank Ltd.

3. The learned Trial Court earlier passed an ex parte decree on 6th March 2009 however, the same was thereafter set aside at the instance of the Defendants. Thereafter, the Defendant No.1 filed written statement on 8th July 2010 and additional written statement on 13th April 2011 as in the meanwhile the plaint was amended by adding ground of denial of title. It is significant to note that the Plaintiffs examined nine witnesses and they were cross-examined by the Defendants, however, Defendants did not lead oral evidence. The learned Trial Court thereafter passed the decree of eviction dated 17th October, 2012 on the ground of non payment of rent, nuisance, annoyance, non-user and denial of title. The Appeal bearing (A-1) Appeal No.56 of 2012 challenging the same filed by both the Defendants was

dismissed on 9th February, 2016. Thereafter, the Revision was filed in this Court by said Mary Pareira and her son Florencio Anthony Pareira who is also present in the Court today. On the basis of affidavit of said Florencio Anthony Pareira, the said Civil Revision Application was allowed to be withdrawn by order dated 20th March 2018 with liberty to file Review Petition and the stay of eviction decree was obtained for a period of four weeks. The said order reads as under :

“1. Heard Mr. Nagendra Dube, learned counsel for the applicants and Mr. Jaideep Mitra, learned counsel for respondents No.1 to 3.

2. **Mr. Dube has tendered affidavit of Florencio Pereira, son and Constituted Attorney of applicant No.1 Mrs. Mary Pareira.** Same is taken on record and marked 'X' for identification. Mr. Dube has also tendered a photo-copy of his PAN Card, which is also taken on record and marked 'Y' for identification.

3. **Upon taking instructions from him, Mr. Dube seeks permission to withdraw Civil Revision Application with liberty to file Review Petition.** He assures that within two weeks from today the applicants will file Review Petition and serve copy in advance on the other side seeking review of the Appellate Court's order dated 9.2.2016 passed in (A-

1) Appeal No.56/2012. He states that along with Review Petition, the applicants will also take out separate application for interim order. **He further submits that ad-interim order granted on 18.7.2016 in terms of prayer clause (b) of this application may be continued for a period of four weeks from today.** In the meantime, the applicants will obtain appropriate interim orders from the Appellate Court.

4. In view thereof, on the motion made by Mr. Dube, C.R.A. is allowed to be withdrawn and is disposed of with liberty as prayed for. Ad-interim order dated 18.7.2016 granted by this Court is extended for a period of four weeks from today. In the meantime, the applicants shall obtain appropriate interim reliefs in the Review Petition. Extension of ad-interim order shall not be construed as an expression of merits either way. The Appellate Court will independently decide the application for interim relief on its own merits and in accordance with law. All contentions of the parties in the Review Petition and the application for interim relief are expressly kept open. Order accordingly.”

(Emphasis added)

4. It is the contention of Mrs. Mary Pareira (Defendant No.1) and Mr. Florencio Pareira that the present Applicant Clarence Anthony Pareira @ Peter Pareira (Defendant No.2)

has played fraud on them and they will point out the said facts in the Review Petition. It is significant to note that the said Review Petition was filed only by Mrs. Mary Pareira i.e. original Defendant No.1. The main contention of said Mary Pareira in Review Petition is that she has never signed the *Vakalatnama* of the Advocate who has appeared in the suit and relationship between her and Defendant No.2 i.e. Clarence Anthony Pareira @ Peter Pareira are strained and the said son i.e. Defendant No.2 has taken action against her interest and, therefore, the impugned order passed by the learned Appellate Court dated 9th February, 2016 confirming the Judgment and Decree passed by the learned Trial Court on 17th October, 2012 be recalled and reviewed.

5. The learned Appellate Bench of the Court of Small Cause at Bandra, Mumbai dismissed the Review Application by observing that the Review Petitioner was represented by Advocate in the suit and she has filed Appeal and at that time, she never raised these contentions and objected about her strained relation with Defendant No.2. It is significant to note that same Advocate has represented the Defendants in the suit as well as in Appeal. The learned Appellate Bench

observed that, all these allegations are made when the possession warrant has been issued and, therefore, under the pretext of Review Petition what is in fact done by Defendant No.1 is starting second round of litigation after the possession warrant is issued. It has been held that the scope of Review is very limited as contemplated under Order 47 of the Code of Civil Procedure, 1908 (for short **“the CPC”**) and, therefore, it has been held that there is no ground for reviewing the order. Accordingly, the Review Petition is held to be not maintainable as it does not fall under the criterias contemplated under Order 47 of the CPC.

6. It is significant to note that the present Civil Revision Application has been filed challenging the said order passed in Review Petition by the Defendant No.2-Peter Pareira. The entire basis of the Review Petition is that fraud has been played by the Defendant No.2 on the Defendant No.1 and the order dismissing Review filed by the Defendant No.1 has been challenged by the Defendant No.2 as legal heir of the Defendant No.1. The said Review Petition was dismissed on 30th October, 2018 and Defendant No.1-Mrs. Mary Pareira passed away on 8th November, 2018. It is significant to note

that in the Review Petition, all the allegations are made against Defendant No.2 i.e. present Applicant who has challenged the order passed in Review Application.

7. A perusal of the Judgment and Order passed by the learned Trial Court while passing the decree of eviction as well as the learned Appellate Court while confirming the decree of eviction shows that both the Courts have concurrently held that the suit premises which are tenanted premises are mortgaged with various financial institutions including L.I.C. Housing Finance Ltd., Citizencredit Co-operative Bank Ltd. and State Bank of Travancore. Both the Courts have recorded finding that the evidence shows that Peter Pareira and Mary Pareira have jointly taken loan against the suit premises without having any ownership rights in respect of the suit flat No.5.

8. It is further significant to note that, in the suit, written statement has been filed by the Defendant No.1. In the said suit, Plaintiffs examined nine witnesses and these witnesses were extensively cross-examined on behalf of both the Defendants. It is significant to note that, both the Defendants i.e. mother and her son Peter Pareira have filed an Appeal

challenging the decree passed by the learned Trial Court and the same Advocate has represented both the Defendants in the Appeal. Therefore, after suffering the decree of eviction and which has been confirmed by the learned Appellate Court, the contention raised by mother (Defendant No.1) that her son Peter Pareira (Defendant No.2) has played fraud on her and she never signed *Vakalatnama* of learned Advocate who represented her, is totally unaccepted. The approach of the learned Appellate Court in dismissing the Review Petition and the reasoning given are proper and legal.

9. It is further significant to note that the said contention was raised in earlier Civil Revision Application No.80 of 2018 by Mrs. Mary Pareira and Mr. Florencio Pareira who is other son of Mrs. Mary Pareira and brother of the present Applicant. It is also significant to note that the Review Petition was only filed by Mrs. Mary Pareira.

10. It is to be noted that all these proceedings are collusive in nature. It is very clear that the present Application filed by Clarence Anthony Pareira @ Peter Pareira [original Defendant No.2] is a collusive proceeding and filed as a result

of collusion with other son Mr. Florencio Anthony Pareira, who is also today present in the Court. It is very significant to note that although the present Application is filed by Clarence Anthony Pareira @ Peter Pareira, said Florencio Anthony Pareira i.e. other son who has made serious allegations against Peter Pareira is present in the Court.

11. At this stage, Mr. Salunke, learned counsel appearing for the Applicant states that said Florencio Anthony Pareira is present in Court as he is Respondent No.4 in the Civil Revision Application. However, Mr. Salunke, learned counsel has failed to show service of this Civil Revision Application made on the said Respondent No.4. Thus, it is clear that the Respondent No.4 is present in the Court without any notice of the case.

12. It is shocking to note that in the Civil Revision Application No.80 of 2018 it was represented to the Court by Mrs. Mary Pareira and Mr. Florencio Pareira that fraud has been played on them by Clarence Anthony Pareira @ Peter Pareira i.e. the son of said Mrs. Mary Pareira and brother of said Mr. Florencio Pareira. It has been represented to this Court that the Applicants i.e. both, Mrs. Mary Pareira and

Florencio Pareira would file the Review Petition on the ground that said Peter Pareira has played fraud on them. However, the Review Petition has been filed only by Mrs. Mary Pareira on the ground that said Peter Pareira has played fraud on her. It is further shocking to note that after the death of Mrs. Mary Pareira, the present Civil Revision Application under Section 115 of the Civil Procedure Code, 1908 is filed challenging the order passed in Review Petition by same Mr. Peter Pareira against whom allegations have been made by Mrs. Mary Pareira. So, in effect, now it is the contention of the present Applicant i.e. Mr. Peter Pareira (Defendant No.2) that he has played fraud on said Mrs. Mary Pareira (Defendant No.1) and, therefore, he should get benefit of the said alleged fraud played by him by setting aside decree of eviction. The fraud alleged is that the Defendant No.1 has not signed the *Vakalatnama* of the Advocate who appeared in suit and the Defendant No.2 took actions against the interest of the Defendant No.1. It is very significant to note that no allegations are made against the Plaintiffs.

13. Thus, it is very clear that all these proceedings are filed

by said Mrs. Mary Pareira, Mr. Florencio Pareira and the present Applicant Clarence Anthony Pareira @ Peter Pareira in collusion with each other. It is also clear that order dated 20th March 2018 passed in Civil Revision Application No.80 of 2018 was obtained by playing fraud on this Court by Mrs. Mary Pareira and said Mr. Florencio Pareira.

14. Apart from above, the learned Appellate Court has concurrently held that both the Defendants have contested the suit, extensively cross-examined the witnesses of the Plaintiffs and both the Defendants have filed Appeal and prosecuted the Appeal and, therefore, the contentions raised that Defendant No.2 has played fraud on Defendant No.1 is not trustworthy.

15. Accordingly, the Civil Revision Application is dismissed. As the various collusive proceedings are filed and as the order in Civil Revision Application No.80 of 2018 is obtained by playing fraud on this Court, the Civil Revision Application is dismissed with cost of Rs.50,000/- to be paid to Tata Memorial Hospital/Centre within a period of three months from today.

16. In view of dismissal of the Civil Revision Application,

nothing survives in the Civil Application and the same is also dismissed.

[MADHAV J. JAMDAR, J.]