

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****WRIT PETITION NO. 3407 OF 2023****Aslam Kassam Merchant****..... Petitioner****VERSUS****Ashraf Kassam Merchant****..... Respondent**

Mr.Aslam Kassam Merchant, Petitioner present in person.

Ms.S.Q.Qureshi for the Respondent.

CORAM: RAJESH S. PATIL, J.**DATE : 1 FEBRUARY, 2024****P.C. :-**

The parties were sent to the mediation before Hon'ble Shri Justice Akil Kureshi, Retired Chief Justice of the Rajasthan High Court. The parties inform this Court that the mediation has failed and the report to that effect has already been filed.

2. This writ petition challenges the order dated 26 August, 2019 passed by the Single Judge of the Court of Small Causes in L.E. & C. Suit. By the said order dated 26 August, 2019, Application Ex.139 (that the suit be heard on day to day basis or in the alternate, may be heard twice a week).

3. By the impugned order dated 26 August, 2019, the Trial Court allowed Ex.139 and expedited the hearing of the suit and directed that the suit will be heard twice a week and the parties were requested to co-operate with the Court for expediting the matter.

4. On an earlier occasion in Writ Petition No. 11504 of 2015, this Court by its order dated 3 December, 2015, expedited the hearing of the suit. For ease of reference, order dated 3 December, 2015 passed in Writ Petition No. 11504 of 2015 is reproduced hereinbelow :-

1 The Writ Jurisdiction of this Court is invoked against the order dated 9-9-2015 passed by the Appellate Bench of the Small Causes Court, by which order, the Misc Appeal being No.61 of 2015 filed by the Plaintiff i.e. the Petitioner herein, came to be dismissed and resultantly the order dated 10-8-2015 passed by the Trial Court came to be confirmed.

2 The Respondent herein is the original Defendant to the Suit in question being L.E. & C Suit No.60/78 of 2012 filed by the Petitioner

herein for eviction of the Defendant on the ground that the Defendant was a gratuitous licensee and that his licence has been terminated. It is an undisputed position that the Defendant resides on the 3rd and 4th floor of the building in question and the Plaintiff resides on the 1st and 2nd floor of the said building. The application in question Exhibit 70 came to be filed by the Defendant for the relief claimed which are more specifically mentioned in the said application, amongst which was the relief that he should not be obstructed from accessing his residence all 24 hours. The Defendant also sought the relief that towards the said end the lift should be operated all 24 hours.

3 The Trial Court considered the said application and has allowed the same by its order dated 10-8-2015. The Trial Court rejected the other reliefs sought vide the said application, however, in so far as the relief in respect of the lift was concerned, the Trial Court observed that since the Defendant is admittedly using the said facility, the said facility has to be made available to him for all 24 hours of the day.

4 The said order passed by the Trial Court dated 10-8-2015 was carried in Appeal. The Lower Appellate Court having regard to the facts prevailing in the instant case did not find any reason to interfere with the order passed by the Trial Court.

5 Having heard the Learned Senior Counsel appearing for the Petitioner and the Respondent appearing in person, in the light of the concurrent orders passed the Courts below, no case for

interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

6 However, in the facts and circumstances of the case, the hearing of the suit is expedited.

5. Thereafter, this Court by its order dated 26 February, 2022 passed in Miscellaneous Civil Application No. 249 of 2021 further directed that the hearing of the suit be expedited as the suit was pending for more than 10 years before the Trial Court. The order dated 26 February, 2022 passed in Miscellaneous Civil Application No. 249 of 2021 for ease of reference is reproduced hereinbelow :-

1) Applicant assures that on the exhibits which are scheduled for hearing before the Court below, pleadings therein shall be completed within a period of one week from today. Statement is accepted as an undertaking to this Court.

2) It is further assured that the Applicant shall argue out the matter on its own merits expeditiously.

3) In view of the above, the Applicant, who is present in the Court through his lawyer, makes a motion for withdrawal of the Application.

- 4) Application is disposed of as withdrawn.
- 5) Needless to clarify that the Court shall decide the said exhibits on its own merits without being influenced by the withdrawal of the present Application expeditiously.
- 6) It is urged that the suit is pending for the last more than 10 years. As such, hearing of the suit is expedited in view of the policy that the old suits are to be decided on priority basis.

6. Mr.Aslam Kassam Merchant, the defendant in person submits that earlier on 24 August, 2015 passed in an Appeal No. 7220 of 2015 refused to the expeditious hearing of the suit. Therefore, Mr.Aslam Kassam Merchant submits that this Court should have not thereafter passed an order expediting the hearing of the suit.

7. It is pertinent to note here that the order dated 24 August, 2015 is passed in a writ petition which challenges an order passed by the revision court refusing to expeditious hearing of the L.E. & C. Suit. The said L.E. & C. Suit was filed in the year 2012 and the order refusing the expediting the suit is passed in

the year 2015 i.e. after three years of the filing of the suit.

8. It seems that thereafter in a separate writ petition filed by the plaintiff, this Court by its order dated 3 December, 2015 expedited the hearing of the suit. So also, this Court as late as on 26 February, 2022 in the Miscellaneous Civil Application No. 249 of 2021, filed by the defendant which sought transfer of the proceedings, again expedited the hearing of the suit, since 10 years had lapsed after filing of the suit.

9. It is admitted here that as regards, the directions given by this Court in order dated 3 December, 2015 and in order dated 26 February, 2022, the defendant appearing in person has not challenged the said orders.

10. I have gone through both the orders. No case is made out by the petitioner to entertain this writ petition.

11. Writ petition is dismissed.

[RAJESH S. PATIL, J.]