

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1862 OF 2024

~~Swapna Sadanand Ayare~~

Since Deceased Through Legal Heirs and Ors .. Petitioners

Versus

~~Kamala Shankardas Tanwani~~

Since Deceased Through Legal Heirs and Ors. .. Respondents

-
- Mr. P.J. Thorat a/w. Ms. Aditi Naikare and Mr. Aniesh Jadhav, Advocate for Petitioners.
 - Mr. Morgan Mendonca a/w. Imran Shekh and Ruby Shaikh, Advocates for Respondent No.2.
 - Mr. Meezan Patel, Advocate for Respondent No.3(b).
-

CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 13, 2024.

P.C.:

1. Heard Mr. Thorat, learned Advocate for Petitioners; Mr. Mendonca, learned Advocate for Respondent No.2 and Mr. Patel, learned Advocate for Respondent No.3(b).

2. In the present case the facts are extremely gross. Suit is filed for possession by the Petitioner. Petitioner claims to be a statutory tenant of Room No.22 which is the Suit property. He is resisted by Defendant Nos.1 to 5 who are presumably legal heirs of the erstwhile statutory tenant of Room No.22.

3. Two specific facts have been pointed out by Mr. Thorat namely that Defendant Nos.1 and 2 surrendered tenancy to the landlord by virtue of a document and received the lessee's share / consideration from the Petitioners in respect of the said Suit property. Naturally Petitioner thereafter stepped into the shoes of the erstwhile statutory tenant and became a statutory tenant of the landlord of the property who is Defendant No.6 before me.

4. The next important fact which Mr. Thorat has submitted is that the Suit property i.e. Room No.22 was occupied by the wife of Defendant No.2 who has recently passed away. He would submit that when she was alive, she had sought one month time for vacating the subject room to hand it over but pursuant to her demise a claim is now resurrected by Defendant Nos.3A and 3B (her legal heirs). He would submit that proceedings are also filed in the Family Court to claim restraint from eviction action on the ground that the Suit room is a dwelling house.

5. Some of the aforesaid contentions are strongly refuted by Mr. Patel who appears for the heirs of Defendant No.3. He seeks to clarify certain things thinking that this Court is prejudiced by the submissions made by Mr. Thorat. I seek to clarify that this Court does not get swept away or prejudiced by any submissions advanced by the Advocates. Despite twice impressing upon Mr. Patel that adequate

opportunity will be given to the contesting Respondents to file their Affidavit-in-Reply, he has twice attempted to interrupt me while dictating this order and has sought to be heard without filing Affidavit-in-Reply. He insisted that he be heard. I have told him to file his Affidavit-in-Reply.

6. Undoubtedly, Respondents who are in possession or rather claim to be heirs of deceased Defendant No.3 who was in possession will be heard by this Court.

7. Mr. Mendonca appears for Defendant No.2. He supports submissions made by Mr. Patel, but would seek leave of the Court to file an appropriate Affidavit-in-Reply. Both the contesting Defendants who are Respondents herein shall file their appropriate Affidavit-in-Reply as directed above and serve copy on the Advocate for Petitioners by 23rd February, 2024.

8. It is expected that such Affidavit-in-Reply will not be mere submissions on paper but would be backed by cogent evidence which shall be considered by this Court strictly in accordance with law. Rejoinder, if any, to be filed thereto shall be done on or before the next date by the Petitioners with a copy to the contesting parties' Advocates.

9. In the meanwhile, ad-interim relief stands allowed in terms of prayer clause 'c' of the Petition.

10. Stand over to **27th February, 2024.**

[MILIND N. JADHAV, J.]

Ajay