

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1103 OF 2025

Aslem G. Ferriera	...Petitioner
<i>Versus</i>	
Momin Zulfikar Kasam & Anr.	...Respondents

Mr. Raj Chourasia i/b. Mr. Pranil Sonawane, Advocates, for the Petitioner.

Mr. Pradeep J. Thorat i/b. Ms. Aditi Naikare, Advocates, for the Respondent No.1.

Ms. Nikita Vardhan, Ms. Vidyashree Perla, Advocates i/b. Kanga & Company, for the Respondent No.2.

CORAM: MADHAV J. JAMDAR, J.

DATED : 28th JANUARY 2025

P. C.:

1. At the outset Mr. Raj Chourasia, learned Counsel appearing for the Petitioner seeks leave to change the name of Respondent No.2. Leave as sought is granted. Amendment be carried out forthwith. Re-verification is dispensed with.

2. Heard Mr. Raj Chourasia, learned Counsel appearing for the Petitioner, Mr. Pradeep Thorat, learned Counsel appearing for Respondent No.1 and Ms. Nikita Vardhan, learned Counsel appearing for Respondent No.2.

3. The only contention raised by the Petitioner is that he is ready to vacate the premises as eviction decree has been passed by the Small Causes Court, however, the Petitioner be granted time till 31st March, 2025. Reliance is placed on the order dated 28th August, 2024 passed by the Supreme Court in Special Leave Petition (Civil) No. 38607 of 2024, by which Supreme Court has granted time till 31st March, 2025 to one of the occupants of the subject property.

4. Mr. Pradeep Thorat, learned Counsel appearing for Respondent No.1, after taking instructions, states that Respondent No.1 has no objection for grant of same relief.

5. Therefore, both the learned Counsel appearing for the Petitioner and Respondent No.1 tender Minutes of Order. The said Minutes of Order are taken on record and marked as **Annexure 'X'**. The said Minutes of Order reads as under:

"MINUTES OF ORDER

1. The Petitioner has filed the present Writ Petition for challenging the Order dated 26th November, 2024 passed by the Learned Judge, Small Causes Court at Bombay whereby the Learned

Judge Small Causes Court at Mumbai directed the Bailiff to execute the issue Warrant of Possession.

2. The Petitioner was a Licensee in respect of the residential premises which was originally owned by the Respondent No.2. The Respondent No.2 had filed L.E. Suit seeking eviction of the Petitioner from the Suit premises. The said L.E. Suit is decreed by the Trial Court and the eviction Decree is confirmed by the Appellate Bench of Small Causes Court. Thereafter Petitioner had sought to challenge the said decree of eviction before the High Court in the year 2024 by filing Application for condonation of Delay. The High Court vide its Order dated 20th March, 2024 dismissed the Application for condonation of delay. Thus, the Decree of eviction against the Petitioner has attained finality.

3. Thereafter the Petitioner sought to raise objection to the Execution of the eviction Decree in the execution proceedings filed by the Respondent No.1 in his capacity as successor of the Respondent No.2. The said objections have been considered by the High Court vide Order dated 9th July, 2024 passed in Writ Petition No.9256 of 2024 and the common Order dated 5th August, 2024 passed in Writ Petition No.10613 of 2024 and others and the objections have been negatived.

4. The Petitioner has stated that two other Licenssers who are similarly placed like the Petitioner had filed SLP before the Hon'ble Apex Court for challenging the Order dated 5th August, 2024 passed by this Court. The Petitioner has pointed out that in that SLP the Hon'ble Apex Court has dismissed the SLP and has granted time to vacate the licensed premises upto 31st March, 2025. Hence the Petitioner is also seeking time to vacate till 31st March 2025 on parity with the Petitioners before the Hon'ble Supreme Court of India.

5. *The Advocate for the Respondent No.1 has pointed out that the building in which the suit premises is situated has been classified as C-1 and is in dilapidated condition. It is contended that the Petitioner has no right to continue in occupation of the suit premises in view of the fact that the decree of eviction passed against the Petitioner has attained finality.*

6. *Having considered the limited request made by the Advocate for the Petitioner this Court is inclined to give time to vacate the licensed premises to the Petitioner upto 31st March, 2025 subject to the following conditions :*

a. The Petitioner shall file Written Undertaking of himself and all Adult family members residing in the Licensed premises stating that only they and no other persons are in occupation and possession of the suit premises and that they will not create any third party rights and/or shall not induct any third person in the suit premises till the possession of the suit premises is handed over to the Respondent No.1.

b. The Petitioner shall further undertake to hand over the clear, vacant and peaceful possession of the suit premises to the Respondent No.1 on or before 31st March, 2025 and that he will not seek any further extension of time to vacate the suit premises. Further, the Petitioner undertakes not to file any further proceedings against the Respondents for claiming any rights in the suit premises only because of continuing in occupation of the suit premises under the present Order.

c. The Petitioner and his family members shall also undertake that they are residing in the suit premises at their own risk and that in the event

of any mishap in the suit premises they will not hold the Respondents liable for the same in any manner whatsoever.

d. The Petitioner shall provide reasonable access to the Respondent No.1 to carry out the necessary scientific tests for determining the structural stability of the suit premises as required by the Municipal Corporation of Greater Mumbai.

e. The Petitioner shall file the said Undertakings within a period of 2 weeks with advance copy of the same to the Advocate of the Respondent No.1 failing which the present Writ Petition shall stand dismissed and the Petitioner will be liable to vacate the suit premises forthwith.

f. That in the event the Petitioner and his family members fail to vacate and hand over clear, vacant and peaceful possession of the suit premises to the Respondent No.1 on or before 31st March, 2025 the Court Receiver, High Court Bombay will stand appointed as Receiver in respect of the present suit premises which is subject matter of the present Writ Petition with directions to take forcible possession of the suit premises from the Petitioner and his family members and hand over the same to the Respondent No.1. No separate Order will be required by the Court Receiver, High Court Bombay for implementing the present direction.

g. The present Writ Petition will stand disposed off in the above terms with no order as to costs."

6. Mr. Raj Chourasia, learned Counsel appearing for the

Petitioner states the undertaking will be filed within a period of one week.

7. It is clarified that if the undertakings given to this Court are not complied with and suit premises are not vacated on or before 31st March, 2025 then apart from the order appointing the Court Receiver, the Petitioner will be liable for action of contempt of Court.

8. Accordingly the Writ Petition is disposed of in terms of the Minutes of Order and in above terms, with no order as to costs.

[MADHAV J. JAMDAR, J.]

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