

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3072 OF 2023

WITH

INTERIM APPLICATION NO.1707 OF 2025

Rukhsana Raffique Shaikh & Ors.

...Petitioners

Versus

Quresha Gulam Mustafa Khan & Ors.

...Respondents

Ms. Vasanti S. Dighe, Advocate for Petitioner in WP and for Respondent in IA.

Mr. Pradyumna D.Sharma a/w Mr. Sandeep Pawar Respondents in WP and for Applicants in IA.

CORAM: MADHAV J. JAMDAR, J.

DATED : 11th March 2025

P.C.:

1. Heard Ms. Dighe, learned Counsel for the Petitioners and Mr. Sharma, learned Counsel for the Respondents.

2. By the present Writ Petition filed under Article 227 of the Constitution of India, the challenge is to the legality and validity of the Order dated 20th February 2023 passed by the learned Appellate Bench of Small Causes Court, Mumbai in Appeal No.11 of 2016.

3. By the impugned Order, the learned Appellate Court has set aside the Order dated 29th January 2016 passed by the learned Trial Court, by which the Suit has been dismissed and the learned Appellate Court has granted eviction decree.

4. The Suit has been filed on the ground of illegal subletting the suit premises, bonafide requirement, change of user and nuisance caused to the Plaintiff and other tenants. The learned Trial Court dismissed the Suit.

5. As far as the Appeal is concerned, the Appellate Court has passed the decree on the ground of reasonable and bonafide requirement and that the Defendant Nos.4 to 6 are illegal occupants of the suit premises, however, dismissed the Suit on the ground of nuisance and change of user.

6. As far as the bonafide requirement is concerned, the learned Trial Court has found that there are 20 members in the family of the Respondent. These 20 members are staying in a premises admeasuring 220 sq. feet. However, the learned Trial Court although made reference to the admissions given by the Defendant

No.4 that there are 20 members in the family of the Plaintiff, however, held that number of members in the family is not the criteria for considering the case for the bonafide requirement. It is further observed that it has to be seen along with proportionate space available in possession, the Plaintiffs have not given the names nor the relation of 20 members in their family and that 18 other members residing with Plaintiffs who are entitled to the criteria of their bonafide need being considered and that the Plaintiff had led no specific evidence to show reasonable need of those 18 people.

7. The learned Appellate Court has recorded very elaborate reasons in paragraphs 12 to 14. It is also recorded that when the learned Trial Court has observed that it is admitted that if the Plaintiff's family consists of 20 members, no other proof is required. The learned Appellate Court has held that once the fact is admitted as per Section 58 of the Indian Evidence Act, the facts admitted need not be proved. It has been further observed that the Plaintiffs are residing in two rooms in same chawl and therefore bonafide requirement of the Plaintiff is proved as there are 20 members in the Plaintiff's family. Thus, the learned Appellate Court

has given appropriate and proper reasons in accordance with the evidence on record while decreeing the suit on the ground of the bona fide requirement.

8. Thus, no interference in the impugned Judgment and Decree of the learned Appellate Court is warranted under Article 227 of the Constitution of India. Accordingly, the Writ Petition is dismissed, however, with no order as to costs.

9. In view of dismissal of the Writ Petition, nothing survives in the Interim Application and same is also disposed of.

10. At this stage, Ms. Dighe, learned Counsel for the Petitioner seeks stay for a period of three months. Accordingly, in the interest of justice, the eviction decree shall not be executed for a period of three months.

(MADHAV J. JAMDAR, J.)