

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

AD-HOC NO. WP-LD-VC-28 OF 2020

WRIT PETITION (L) NO. OF 2020

Mrs. Rajani B. Somkuwar ... Petitioner

Versus

Ms.Sarita Somkuwar & Anr. ... Respondents

Mr.Shyam Dewani a/w. Mr. Sahil Dewani, Ms. Heena Kapoor i/b. Dewani and Associates for the Petitioner.

Mr.Amarendra Mishra for Respondent No. 1.

Ms.Oorja Dhonde for Respondent No. 2.

Mrs. Rajani B. Somkuwar – Petitioner a/w. her youngest daughter – Ms. Vaishali Somkuwar – Mane, present in person.

Ms.Sarita Somkuwar – Respondent No. 1, present in person.

CORAM : S.J.KATHAWALLA, &

N.R. BORKAR, JJ.

DATE : 19TH JUNE, 2020

ORAL ORDER (PER S.J. KATHAWALLA, J.) :

1. Our country has always been proud of progeny like Shraavan Kumar, who to fulfill the wish of his poor, blind and ageing parents, took them on a pilgrimage by carrying them on his shoulder in two baskets put on either side of the bamboo stick, and whilst trying to collect water on his way from a stream, to quench the thirst of his parents, became a target of King Dashrath's arrow. It is unfortunate that in the last several years Courts are repeatedly witnessing, old parents knocking at its doors, in the twilight years of their lives seeking redressal of their grievances against their children.

This inter alia promoted the Parliament to enact 'The Maintenance and Welfare of Parents and Senior Citizens Act, 2007' with effective provisions to ensure the protection and welfare of the parents and senior citizens by their children / legal heirs.

2. The present Writ Petition is filed by a 70 years old Petitioner, who is an ex-government employee and the mother of five daughters including Respondent No.

1. She has approached the Court alleging that she is mentally and physically tortured by the Respondent No. 1.

3. Before we proceed further we place on record that we are equally cognizant of cases, where at times Courts have observed that cases / complaints are brought before it by parents who may have overreacted at the conduct of their child at the instance / provocation of other legal heirs/children. Put differently, at times unscrupulous children/relatives/heirs may manipulate aged parents against a particular sibling, merely to gain an unfair advantage, thereby using the unsuspecting aged parents as stooges. It is therefore very necessary for the Court in such cases to directly interact with the complainant and the person complained against, along with, at times other members of the family. Thereafter putting the experience of the Court to use, and keeping in mind that the welfare of the parents / senior citizens is of paramount importance, ascertain the seriousness and correctness of the allegations made, pass appropriate order/s ensuring that no injustice or inconvenience is caused to either party.

4. By our Order dated 5th June, 2020, we have in detail set out the

allegations made by the Petitioner mother against Respondent No. 1. Since the matter was on that day taken up for urgent orders, the Respondent No. 1 daughter did not have an opportunity to file her Affidavit, dealing with the allegations made against her by the Petitioner mother. We therefore prima facie gathered an impression that the Petitioner mother seriously apprehended physical and mental harassment and consequent threats to her life, at the hands of her daughter – Respondent No. 1, if she resided in her own flat at Kandivali -East (**the said flat**), without the Respondent No. 1 first being evicted therefrom. In view thereof, though the Petitioner mother in her direct address to us, insisted that her daughter – Respondent No. 1 along with her 19 years old son be directed to forthwith vacate her flat, because of the pandemic and consequent problems that individuals are facing, we declined to pass an order directing the Respondent No. 1 to vacate the said flat by making alternate arrangements, and instead passed the following Order :

“i. We hereby sternly warn Sarita, as well as her son – Chayankk Kumar, that in the event of this Court receiving any complaint from the Petitioner of harassment by either or both of them, then in that event, after verifying the same, we will be constrained to pass stern orders including an order restraining them from entering the said Flat.

ii. The Senior Inspector of the local police station, under whose jurisdiction the said Flat is situated, is directed to render all assistance, at any point of time to the Petitioner, who is a senior citizen, as and when she needs the same.

iii. Sarita, as well as her son, will not obstruct entry of any of the relatives of the Petitioner, whom the Petitioner wants to meet in the said Flat. However, Sarita and / or her son shall not bring any of their guests / relatives in the said Flat, without obtaining prior permission of the Petitioner through her Advocate.

iv. The Petitioner, as well as Sarita are granted liberty to install CCTV Camera in the common areas / rooms of the said Flat except bed-rooms and bath / wash rooms.”

5. Thereafter, the Respondent No. 1 daughter also filed her detailed Affidavit, dealing with the allegations made in the above Writ Petition by her mother, and set out facts, which according to her establishes that the Petitioner mother was reacting / over-reacting at the instance of her other sibling namely her sister -Vaishali, who has admittedly temporarily come down with her family from Singapore.

6. Despite the above order, the Petitioner – mother has not started residing in the said flat. However, whilst refuting the allegations of Respondent No. 1 daughter, she has made an offer to allow Respondent No. 1 and her son to reside in one of her flats at Nalasopara, on and from 15th July, 2020, if she agreed to vacate the said flat along with her son, so that she (the Petitioner) could start residing again in the said flat for the remainder of her life in peace.

7. We are happy to note, and we appreciate the grace today shown by Respondent No. 1 daughter and her son, who have undertaken to vacate the said flat

within a period of eight weeks from today, along with their belongings and start living in some other premises, which they will try and obtain on leave and license basis within a period of eight weeks from today.

8. We therefore, without finally deciding whether the allegations made by the Petitioner mother against her daughter – Respondent No. 1 or the allegations made by Respondent No.1 daughter against the Petitioner mother and her siblings, more particularly against her sister -Vaishali, are correct or not, keeping in mind the over all interest of the family and their rights, if any, qua the said flat under law, pass the following Order :

- i. The undertaking given by the Respondent No. 1 and her son that they will vacate the said flat (where they are admittedly residing since the last 20 years), along with their belongings within a period of eight weeks from the date of this Order, is accepted.
- ii. If the Respondent No. 1 along with her son, are unable to find premises on leave and license basis within a period of 08 weeks from today, the Petitioner shall allow them to reside in her flat at Nalasopara, until they find a premises of their choice on leave and license basis.
- iii. The Respondent No. 1 shall pay the maintenance charges to the Society for the period during which she and her son occupy the flat at Nalasopara. However, she will not be required to pay any compensation to the Petitioner mother and / or any other person for her stay in the flat at Nalasopara. Needless to state, the Respondent

No. 1 shall also bear and pay electricity, telephone and other like charges incurred during her stay, on actuals.

iv. The Petitioner shall move in the said flat upon the Respondent No. 1 and her son vacating the same i.e. within a period of eight weeks from today.

v. Since the share certificate issued by the Society admittedly stands in the sole name of the husband of the Petitioner, who passed away intestate on 26th January, 2011, the Petitioner shall not sell, alienate, encumber and part with possession or create third party rights in respect of the said flat during her lifetime, without seeking permission of this Court and without giving notice to all the legal heirs of her husband. However, the Petitioner will be entitled to execute her Will and bequeath her share in the said flat to person/s of her choice.

vi. If any of the daughters of the Petitioner and / or any other relatives or any person starts residing in the said flat along with the Petitioner as a Caretaker, such person shall vacate the said flat immediately upon the demise of the Petitioner and shall not make any claim on the said flat, on the ground that he / she / they were residing therein along with the Petitioner.

vii. Since the Court has finally not determined any of the allegations made by either parties against each other, or against the siblings of Respondent No. 1, it is made clear that none of the allegations made by either party, stand established. The Petitioner mother, Respondent No. 1, as well as the other daughters of the Petitioner and / or their family members and / or any other person, shall not publicise any

allegations against each other in any manner whatsoever including but not limited to correspondence, social media, newspapers, etc.

viii. A copy of this Order shall be forwarded to all the legal heirs of the Petitioner and her deceased husband, and their acknowledgment be obtained.

ix. The above Writ Petition is accordingly disposed off.

9. This Order will be digitally signed by the Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this Order.

(N.R.BORKAR, J.)

(S.J.KATHAWALLA, J.)