

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
APPELLATE SIDE  
CIVIL APPLICATION NO.2346 OF 2004  
IN  
WRIT PETITION NO.7420 OF 2003

Shabbirbhai Charbiwala	....	Petitioner
Vs.		
Smt. Shirinbai Hasanally		
and others	....	Respondents

Ms Monica D'Souza for the Petitioner.

Shri Sachin N. Dhakephalkar for the Respondents.

**CORAM:** R.M.S. KHANDEPARKAR, J.

**DATED:** SEPTEMBER 30, 2004

P.C:

1. Heard. Perused the records. By the present application, the petitioner is requesting for extension of time to vacate the suit premises. By order dated 7-1-2004 passed in Writ Petition No.7420 of 2003, time was granted till 30-9-2004 to the petitioner to vacate the suit premises, subject to giving usual undertaking. It is not in dispute that the undertaking was accordingly filed.

2. It is the case of the petitioner that for the reasons disclosed in the application and more particularly in paras 4, 5 and 6, the petitioner genuinely needs three months' time to vacate the

premises. On the other hand, it is the contention on behalf of the opponents/original respondents that the petitioner is trying to take undue advantage of the generosity disclosed on the last occasion by not objecting to his request for nine months to vacate the premises and that there is no justification for grant of further time to the petitioner to vacate the premises.

3. The application apparently discloses certain facts which have been stated on oath by the petitioner. Those facts have been stated in support of the justification for extension of time. There is no counter by the respondents to those facts stated on oath.

4. The order dated 7-1-2004, granting time upto 30-9-2004, also discloses that there was no serious objection raised for grant of such time to the petitioner for vacating the premises. Undoubtedly, as rightly submitted by the learned Advocate for the respondents, the petitioner is merely an obstructionist. However, merely because the petitioner is an obstructionist, considering the facts disclosed in the application, it cannot be said that he has no genuine difficulty or that his request for extension of time by three months lacks bona fide. Considering the facts disclosed in the application, more particularly regarding the sickness of the family member of the

petitioner, and the genuine efforts being made by the petitioner to acquire a premises on rental basis, in my considered opinion, the petitioner has made out a case for grant of extension by a period of three months. However, it is made clear that this extension of time will be the last opportunity and there won't be any further extension of time and the petitioner under any circumstances will have to vacate the suit premises and deliver the peaceful possession thereof to the respondents on or before 31-12-2004. Undoubtedly, the extension is subject to usual undertaking to be given by the petitioner and the other member/s as was directed under the order dated 7-1-2004 and the undertaking should be filed within a period of two weeks from today. Application accordingly stands disposed of in above terms.

5. Needless to say that in view of extension of time granted to vacate the premises, the petitioner and the other member/s of his family stand relieved from their undertaking given pursuant to the order dated 7-1-2004. However, the order relieving the petitioner and the other member/s of his family from the earlier undertaking shall be subject to the submission of fresh undertaking in terms of the order passed today.

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