Dixit

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.51 OF 2018

1. Mr. Nandlal Kewalramani,]
   Aged 72 years, Occ.: Retired.]
2. Mrs. Shobhadevi Kewalramani,]
   Aged about 70 years, Occ.: Housewife,]
   Both Inhabitants, residing at Flat No.11,]
   Brijbala Building, 21st Road,]
   Bandra (West), Mumbai – 400 050.] .... Appellants

Versus

1. Mr. Rajesh Nandlal Kewalramani,]
   Aged 45 years, Occ.: Business,]
   Residing at Flat No.1902, Jayshree]
   Apartments, Navy Colony, Malad (West),]
   Mumbai - 400 064.]
2. Mrs. Simran Rajesh Kewalramani,]
   Aged 44 years, Occ.: Business,]
   Residing at Flat No.11, Brijbala Building,]
   21st Road, Bandra (West), Mumbai-400050.] .... Respondents

ALONG WITH

CIVIL APPLICATION NO.72 OF 2018
IN
APPEAL FROM ORDER NO.51 OF 2018

Mrs. Simran Rajesh Kewalramani,]
Aged 44 years, Occ.: Housewife,]
Residing at Flat No.11, Brijbala Building,]
21st Road, Bandra (West), Mumbai-400050.] .... Applicant

In the matter between

1. Mr. Nandlal Kewalramani,]
   Aged 72 years, Occ.: Retired.]

2. Mrs. Shobhadevi Kewalramani,]
Aged about 70 years, Occ.: Housewife,]
Both Inhabitants, residing at Flat No.11,]
Brijbala Building, 21st Road,]
Bandra (West), Mumbai – 400 050.] .... Appellants

Versus

1. Mr. Rajesh Nandlal Kewalramani,]
Aged 45 years, Occ.: Business,]
Residing at Flat No.1902, Jayshree]
Apartments, Navy Colony, Malad (West),]
Mumbai - 400 064.]
2. Mrs. Simran Rajesh Kewalramani,]
Aged 44 years, Occ.: Business,]
Residing at Flat No.11, Brijbala Building,]
21st Road, Bandra (West), Mumbai-400050.] .... Respondents

Mr. Dinesh Tiwari, a/w. Mr. Swapnil Ambure and Mr. Mikhai Dey, I/by M/s. Dinesh Tiwari and Associates, for the Appellants.

Mr. Rajesh Singh for Respondent No.1.

Mr. Gaurav Chaubey, a/w. Ms. Kavita Prakash, I/by Mr. Rabindranath S. Chaubey, for Respondent No.2.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.
RESERVED ON : 24TH SEPTEMBER, 2018.
PRONOUNCED ON : 11TH OCTOBER 2018.

JUDGMENT :

1. Heard Mr. Tiwari, learned counsel for the Appellants; Mr. Singh, learned counsel for Respondent No.1; and Mr. Chaube, learned counsel for Respondent No.2.

2. This Appeal takes an exception to the order dated 14th August 2017 passed by the City Civil Court, Dindoshi (Borivali Division), Goregaon, Mumbai, thereby dismissing Notice of Motion No.1614 of 2017 filed in S.C. Suit No.3160 of 2015.

3. The said Notice of Motion was taken out by the Appellants herein, seeking the relief of compliance of the order dated 19th July 2016 passed by the said Court.

4. Facts of the present Appeal are to the effect that, Appellant Nos.1 and 2 are the parents of Respondent No.1 and in-laws of Respondent No.2. They are in possession of Flat No.11, Brijbala Building, 21st Road, Bandra (West), Mumbai. It is their case that, the said flat was purchased by Appellant No.1 jointly, in the ratio of 50% : 50%, with his brother Suresh Kevalramani, by virtue of an 'Agreement of Sale' dated 20th August 1981. In the month of June, 1990, Appellant No.1, with his hard-earned money from the business, purchased the remaining 50% share of his brother in the suit flat in the name of his wife, i.e. Appellant No.2 herein, and Respondent No.1 by an 'Agreement' dated 8th June 1990. The entire consideration for the said flat was, thus, paid and arranged by Appellant No.1 alone. Respondent No.1, who, at the relevant time, in the year 1990, was a minor boy of only 17 years age and studying in the College, had no source of income; therefore, there was no question of

Respondent No.1 contributing any amount for purchase of the suit flat. It is the contention of Appellant No.1 that, half share of his brother was purchased by him in the name of Appellant No.2 and Respondent No.1, only with an understanding that Respondent No.1 will hold his share in the said property in a fiduciary capacity until he would pay his share of contribution in the future, which the Appellants believed would serve as their retirement funds in the old age. Respondent No.1, however failed to do so. It was only after lots of follow-up, Respondent No.1 has, after he has acquired his own flat in April, 2014 and after a lengthy litigation, decided to return his share in the flat in favour of Appellant No.2 and, accordingly, he had executed a 'Gift Deed', dated 23rd March 2015 in favour of the Appellants of his share in the suit flat.

5. It is further contention of the Appellants that, after the marriage of Respondent No.1 with Respondent No.2 in the year 1995, Respondent No.2 also started residing in the suit flat, along with Respondent No.1. Their daughter Anita, who was marred in the year 1999, also, on account of marital discord with her husband over her medical issues, has been staying with the Appellants since 2005. Respondent Nos.1 and 2 had two daughters by name Prisha, aged 19 years, and Dia, aged 13 years. Prisha has shifted to 'Dublin' in Ireland in 2016, where she is pursuing her studies.

6. It is the grievance of the Appellants that, Respondent No.2 is a

very abusive and aggressive lady and she was ill-treating and harassing the Appellants. Respondent No.1 has always been ignoring the tantrums, aggressions and high-handedness of Respondent No.2 and even supporting her misbehaviour all the time, which multiplied the Appellants' problems many folds. Respondent Nos.1 and 2 are occupying two bed-rooms in the said flat and not allowing the Appellants to live in the said house at the fag-end of their lives and frail health, peacefully and comfortably. The harassment of Respondent No.2 to the Appellants increased to such an extent that, Police complaints were filed. Respondent No.2 even attempted to kill the Appellants by trying to create a blast and fire in the A.C. Compressor in a room adjacent to Appellant No.2's bed-room, which is separated by only a wooden cupboard panel. Respondent No.2 has kept on filing various criminal complaints against the Appellants. In those, they were arrested and taken to the Police Station. She has also made some false allegations against Appellant No.1 of sexually molesting her. Hence, the Appellants were even constrained to install C.C.T.V. Cameras in the common areas of the suit flat, in order to ensure their safety. However, Respondent No.2 has tried to disconnect the said C.C.T.V. Cameras.

7. Thus, it is the contention of the Appellants that, as their lives have become miserable in their own house and they are not having any other shelter, at this advanced age of their life, when they are running the age

of more than 70 years, it is not possible for them to keep Respondent Nos.1 and 2 any more in their own house and hence, they should be called upon to remove themselves from the suit flat and further be restrained from entering into or remaining in the suit flat again.

8. Along with this Suit for injunction, the Appellants had moved the Notice of Motion No.3383 of 2015 for the same relief at the interim stage, which came to be resisted by Respondent No.2, contending, *inter alia* that, the suit flat being her matrimonial home, she is entitled to remain in possession thereof. She has also no other shelter of her own and in such situation, she cannot be asked to remove herself from the suit flat, that too, at the interim stage. It was contended by her that, it is the Appellants, who have, by joining hands with Respondent No.1, made her life miserable and difficult. Appellant No.1 even tried to sexually molest her and hence, she was constrained to file the complaint with Police. Since then, she is called upon to remove herself from the said house. It is her contention that, as Respondent No.1 is having 1/3rd share in the suit flat and the 'Gift Deed', dated 23rd March 2015, which was executed by him of his share in the suit flat in favour of Appellant No.2, is only a manipulated and collusive document. She is entitled to remain in possession of the suit flat. Moreover, she has also filed Suit for cancellation of the said 'Gift Deed'. Her contention is that, she could not be dispossessed without following the due process of law and hence, the

Notice of Motion taken out by the Appellants was required to be dismissed.

9. The Trial Court was, after considering the material on record and having regard to the submissions advanced at bar by learned counsel for both the parties, by its order dated 19th July 2016, pleased to hold that, as the prayers made in the Notice of Motion are identical to the prayers made in the plaint, allowing the said Notice of Motion at the interim stage, would amount to allowing the Suit itself in its entirety. It was held that, the issue with respect to *'the joint ownership of the suit flat'* needs to be decided on the touch-stone of the evidence to be led at the time of trial. According to the Trial Court, though the record showed that, Respondent No.1 has transferred his 1/3rd undivided share in the suit flat to his mother by the 'Gift Deed', dated 23rd March 2015, the said 'Gift Deed' was under challenge. At the same time, the entire suit property stands in the name of Appellant Nos.1 and 2 and, therefore, the Trial Court held that, Respondent Nos.1 and 2 had no right over the said property; the entitlement of Respondent No.2 will be decided on the basis of the evidence led and the ratio laid down by this Court and the Hon'ble Apex Court at the time of disposal of the Suit. The Trial Court further held that, at this interim stage, the main relief sought in the Suit also cannot be granted in the Notice of Motion, as it would amount to allowing the Suit at the inception itself. Hence, the Trial Court held that,

following order would serve the ends of justice and, accordingly, disposed off the Notice of Motion :-

> *"1. The Defendant No.2 shall remain in the suit property till the Defendant No.1 provides equal alternative accommodation to the Defendant No.2 to her satisfaction, within a period of 6 months from today.*
>
> *2. In the meantime, the Defendant No.2 is restrained from creating any nuisance and harassment to the Plaintiffs.*
>
> *3. As soon as Defendant No.1 arranges alternative accommodation to the satisfaction of Defendant No.2 within the stipulated period, the Defendant No.2 shall remove herself from the suit property till disposal of the Suit.*
>
> *4. In view of the above, present Notice of Motion is tagged along with the main Suit."*

10. Being aggrieved by this order of the Trial Court, the Appellants preferred Appeal from Order No.924 of 2016. None of the Respondents, however, challenged the said order.

11. During pendency of the said Appeal, the matter was adjourned from time to time, as Respondent No.1 was requested to see if alternate accommodation can be provided to Respondent No.2 in or around Bandra (West). This Court was pleased to observe in the order dated 22nd February 2017 passed in the said Appeal that,

"At-least prima facie, it appears that, the efforts have been made in this direction by Respondent No.1; however, Respondent No.2 is not willing to co-operate. Every time, a new accommodation is suggested, Respondent No.2 is prone to find fault with the same. On such basis, Respondent No.2 continues to reside with her in-laws i.e. Appellants and Respondent No.1. The matter was adjourned from time to time, in order to enable Respondent Nos.1 and 2 to decide upon a suitable accommodation. There were several apartments indicated by Respondent No.1, for which the rent ranged between Rs.35,000/- to Rs.40,000/- per month. These are all single bed-room apartments, which, at-least, prima facie, would constitute sufficient accommodation for Respondent No.2, who is to reside therein along with her daughter. The second daughter is stated to be studying abroad and is scheduled to come during vacation. Respondent No.1 has also offered to pay Rs.40,000/- per month towards rental accommodation, which Respondent No.2 can find for herself. Respondent No.1 was, accordingly, directed to file an affidavit/undertaking to the aforesaid effect."

12. As, on the date on which this order was passed, Respondent No.2 was absent, the matter was adjourned to 7th March 2017; however, it appears that, on that day also, no progress was made in the matter.

13. Hence, in the meanwhile, as the period of six months, during which Respondent No.1 was to find out the alternate accommodation for Respondent No.2 to her satisfaction, was over, the Appellants filed the present Notice of Motion before the Trial Court, after withdrawing the Appeal from Order No.924 of 2016, contending, *inter alia,* that,

Respondent No.2 is adopting an adamant approach and not approving any of the alternate accommodations, which were shown to her. It was submitted that, not less than 45 different options were offered by Respondent No.1 all across Mumbai, including in the same vicinity, where she is currently residing. Respondent No.2, however, rejected the same on one pretext or the other and intentionally avoided and failed to comply with the order passed by the Court. At the same time, Respondent No.2 was also causing lot of harassment and nuisance to the Appellants, on account of which, they have to be constantly under fear. They are even unable to sleep properly, as they are scared that Respondent No.2 would implicate them in some more false cases. It was submitted that, even in the Appeal filed in this Court, Respondent No.2 has purposely remained absent, taking dates on one pretext or the other and in such situation, there was no other option for the Appellants, but to file this Notice of Motion, seeking removal of Respondent No.2 from the suit flat, as Respondent No.1 has already shifted to another flat at Malad.

14. This Notice of Motion also came to be resisted by Respondent No.2, reiterating her earlier stand that, she has right to remain in possession of the suit flat, it being her matrimonial home, and she cannot be asked to vacate the same. It was contended that, in view of the Suit filed by her, challenging the 'Gift Deed' executed by her husband in favour of his

mother and the said Suit being subjudice, the fact that more than 45 properties were shown to her by Respondent No.1 as an alternate accommodation, which were rejected by her, is totally irrelevant. It is her contention that, she cannot be dispossessed from the suit flat even by the Court.

15. The Trial Court has decided this Notice of Motion by observing that,

> *"The issue as to 'whether the suit premises is a matrimonial home, shared household or joint family property?', needs to be adjudicated on merits at the time of trial of the Suit. Hence, restraining Respondent No.2 at this stage, in any way, would prejudice her rights. However, taking into consideration the grievances raised by the Appellants, it would be just to proceed with the Suit and adjudicate the matter on merits."*

16. Accordingly, the Trial Court has dismissed the Notice of Motion and expedited the hearing of the Suit.

17. This order of the Trial Court is the subject-matter of the present Appeal. The submission of learned counsel for the Appellants is that, Respondent No.2 is only interested in harassing the Appellants and, that too, at their old age. Though she is having her own flat, she is not shifting there. She is only interested in getting the suit flat, by usurping the rights of the Appellants and Respondent No.1. According to learned

counsel for the Appellants, it was incumbent on her to comply with the earlier order passed by the Trial Court. Though she was shown various properties and even given the option of searching her own alternate accommodation, for which Respondent No.1 was ready to pay the rent in the range of Rs.35,000/- to Rs.40,000/- per month, she is not ready to do so. Conversely, the telephonic conversation between Respondent No.2 and one Mr. Tulsiani, the transcript of which is produced on record, shows that she wants to snatch the suit flat from the Appellants and for that purpose, she is ready to go to any extent, even to the extent of lodging false complaint that Appellant No.1 has tried to sexually molest her daughter.

18. According to learned counsel for the Appellants, when the earlier order passed by the Trial Court is not challenged by Respondent No.1 or even by Respondent No.2, there is no other option for them, but to comply with the said order. Respondent No.2 cannot simply reject the offers given to her, merely because the alternate accommodation was to be given *"to her satisfaction"*. It is submitted that, this is a case of sheer harassment of the Appellants and in no way, this Court should tolerate the same. It is submitted that, this Court should make Respondent No.2 to comply with the earlier order passed by the Trial Court, which is not disturbed or set aside even in the Appeal. Conversely, as per the observations made by this Court in the said Appeal also, it was

Respondent No.2, who has remained absent and avoided to comply with the said order and further rejected the offers on one pretext or the other. It is submitted that, the Trial Court has not at all considered this aspect of the case. Trial Court has also not sought compliance of its own order and passed the order of simplicitor expediting the Suit, which the Trial Court also knows from the conduct of Respondent No.2 that, she will not comply and thereby add to the agony of the Appellants. According to learned counsel for the Appellants, therefore, the impugned order of the Trial Court calls for interference at the hands of this Court.

19. Per contra, according to learned counsel for Respondent No.2, the fact that Respondent No.1 has transferred his 1/3rd share in the suit flat by executing the 'Gift Deed' in favour of Appellant No.2, is more than sufficient to prove dishonest intention on the part of Respondent No.1, who has joined hands with the Appellants. It is evident that, all the three of them are trying to evict her, with her daughter, from the suit flat forcibly and without following the due process of law. This Court, therefore, should not succumb to their tactics and protect the possession and residence of Respondent No.2 in the suit flat, it being her matrimonial home and shared household.

20. It is submitted that, no fault can be found in the impugned order passed by the Trial Court of dismissing the Notice of Motion, by which

the Appellants were seeking the relief of interim mandatory injunction of removal of Respondent No.2 from the suit flat. The Trial Court has also expedited the hearing of the Suit and hence, all the disputed questions of law and facts can be decided at the time of trial. No case is made out, therefore, at this stage, to allow the relief of interim mandatory injunction, as claimed by the Appellants.

21. In my considered opinion, as the earlier order passed by the Trial Court of, *"directing Respondent No.1 to provide equal alternate accommodation to Respondent No.2 to her satisfaction within a period of six months therefrom and as soon as Respondent No.1 arranges alternate accommodation to the satisfaction of Respondent No.2 within the stipulated period, Respondent No.2 shall remove herself from the suit flat till disposal of the Suit"*, is not challenged, either by Respondent No.1 or by Respondent No.2 and the present Notice of Motion is filed seeking compliance of the said order and even in the Appeal preferred by the Appellants, that order is not disturbed, as the said Appeal came to be withdrawn, this Court need not and cannot now enter into the merits of the said order and decide whether Respondent No.2 has right to remain in possession of the suit flat, it being her matrimonial home or shared household. It is a matter of record that, in the said order, the Trial Court has restricted the right of Respondent No.2 to remain in the suit flat only till Respondent No.1 provides her equal alternate accommodation, to her

satisfaction, within the period of six months and thereafter, once such alternate accommodation is arranged, she had to remove herself from the suit flat. Therefore, in this Appeal, this Court need not enter into the question about the right of Respondent No.2 to remain in possession of the suit flat; it being her matrimonial home or shared household. The said issue was already agitated in the earlier Notice of Motion and it was not upheld. The said Notice of Motion was disposed off with a direction that, Respondent No.2 will have to shift to the alternate accommodation, which was to be arranged by Respondent No.1 for her, within a period of six months; may be subject to her satisfaction.

22. Therefore, in this Appeal, this Court has only to consider as to *'whether Respondent No.1 has made any bonafide efforts to arrange for the alternate accommodation for Respondent No.2 within the stipulated period of six months?'* To that extent, it has to be held that, there is more than sufficient evidence on record. As can be seen, there are, at-least, about 49 alternate premises, which were suggested and offered by Respondent No.1 to Respondent No.2. As noted in the order dated 22nd February 2017, passed by this Court *[Coram : M.S. Sonak, J.]* in the earlier Appeal from Order No.924 of 2016, *"the efforts had been made in this direction by Respondent No.1; however, it was Respondent No.2, who is not willing to co-operate"*.

23. It was specially observed therein that,

> *"Every time, when any accommodation is suggested, she is prone to find fault with the same. On such basis, she continues to reside with her in-laws. Though the matter was adjourned from time to time, in order to enable Respondent Nos.1 and 2 to decide upon a suitable alternate accommodation, it was of no use."*

24. This Court was also constrained to observe that, *"there are several apartments indicated by Respondent No.1, for which rents ranged between Rs.35,000/- to Rs.40,000/- per month"*. This Court has recorded a satisfaction that, *"these are all single bed-room apartments, which, at-least, prima facie, would constitute sufficient accommodation for Respondent No.2, who is to reside therein along with her daughter"*. Not only that, this Court has also recorded *"the offer made by Respondent No.1 to pay the amount of Rs.40,000/- per month towards rental accommodation, which Respondent No.2 can find for herself"*.

25. It is pertinent to note that, despite this specific order passed by the Court in the earlier Appeal and the bonafide efforts made by Respondent No.1 to show her, not less than 49 alternate accommodations and, in the alternate, payment of the reasonable rent in the range of Rs.35,000/- to Rs.40,000/- per month, Respondent No.2 has not accepted any of the offers and, as observed by this Court, she has continued to find fault with the same only with an intention to remain in possession of the suit flat.

This Court has even observed that, *"these accommodations were suitable for her residence"*. Therefore, if Respondent No.2 is avoiding even to consider the said offer, it follows that, it is Respondent No.2, who is not complying with the order passed by the Trial Court, which she has not challenged and which has remained undisturbed on record.

26. Not only in the earlier Appeal, but in this Appeal also, this Court was, from time to time, constrained to observe that, it is Respondent No.2, who is avoiding compliance of the order passed by the Trial Court. For example, on 29th September 2017, when this Appeal was placed for admission, this Court *[Coram : Mrs. Mridula Bhatkar, J.]* was constrained to observe as to how the implementation of the order dated 19th July 2016 passed by the Trial Court was necessary, considering that the Appellants are being harassed at the hands of Respondent No.2 and Respondent No.2 has already filed two criminal cases against them, out of which, in one case, she has made allegations of molestations against Appellant No.1 and hence, it was difficult for the parties to stay together on hostile terms. It was also observed that,

> *"If as per Respondent No.2, there were instances of sexual assault and molestation by Appellant No.1, then, it was dangerous for her safety. Similarly, if the allegations are false, then it will be equally traumatizing for the Appellants to take such stigma."*

27. Hence, it was held that,

> *"It was the duty of Respondent No.1 to provide alternate accommodation of same standard of living to his wife. The Suit will also take long time for its conclusion. Hence, some via media was required to be found out at the interim stage. The issue cannot be kept pending."*

28. This Court *[Coram : Mrs. Mridula Bhatkar, J.]*, therefore, in its subsequent order dated 5th October 2017, was constrained to direct Respondent No.2 to submit the details of immovable properties owned by Respondent No.1 and father-in-law, besides the suit flat. She was also directed to find out for her accommodation, the flat of 'One Bed Room+Hall+Kitchen', or, the flat, which is suitable as per her present standard of living i.e. approximately having area of 750 sq.ft. in a decent locality. The time was given, therefore, to both the parties to act as per the directions.

29. Record of this Appeal shows that, thereafter, on 12th October 2017, Respondent No.2 has produced the list of the immovable properties, which stand in the name of Respondent No.1 and her in-laws. In the list, it was mentioned that, out of seven properties, five properties are already sold. From the remaining two properties, one is the suit flat, which, as on today, stands in the name of the Appellants; whereas, the second property is Flat No.1902 at Jayshree Apartment in Malad, which

is standing in the name of her husband and mother-in-law. However, according to Respondent No.1, the said flat was standing in the name of his mother alone. On that day, Respondent No.2 had also given description of the flat, which she wants to purchase. It was, however, made clear to the parties that, *"Respondent No.2 should search and find the flat of not more than 750 sq.ft. on a rental basis"*. Respondent No.1 and Appellants were also directed to give the list of two flats of 650 sq.ft. as well as of 750 sq.ft. in the vicinity of the school of Respondents' daughter, along with the details of the rent, on the next date, so that alternate arrangements can be made.

30. The perusal of the said order also goes to show that, on that day, Respondent No.2 had submitted that, the area of the suit flat is 1,200 sq.ft.; whereas, learned counsel for the Appellants has submitted that, the area of the suit flat is only 922 sq.ft. Hence, the parties were directed to produce the 'Receipt' of the Property Tax of the year 2017, disclosing the area of the suit flat. It was made clear that, depending on the area of the suit flat, the standard of living of the parties can be considered and the area of the proposed tenancy premises can be fixed.

31. Thereafter, the matter was taken up for final hearing on 27th November 2017. On that day, Respondent No.1 has submitted that, 11 years old daughter of the Respondents is studying in the school at Khar

and he is ready to provide 'One Bed Room + Hall + Kitchen flat' near her school at Khar on rental basis to Respondent No.2. On that day, Respondent No.2 produced the Certificate of the Secretary of the Co-operative Housing Society, in which the suit flat is situate, disclosing that, the area of the suit flat is 1,259 sq.ft.; whereas, it was submitted by learned counsel for the Appellants that, it was a carpet area and the net built up area of the suit flat is 922 sq.ft. It was then pointed out by learned counsel for Respondent No.2 that, Appellant No.2 owns one flat at Malad, where Respondent No.1 - her husband, is residing alone.

32. This Court *[Coram : Mrs. Mridula Bhatkar, J.]*, after taking into consideration all these submissions, was pleased to observe that,

> *"Providing 'One Bed Room + Hall + Kitchen flat' at Khar on rental basis, near the school of younger daughter, appears to be a reasonable stop-gap arrangement and hence, Respondent-husband is directed to furnish the details of three properties to the Respondent-wife and the Respondent-wife can visit those properties and select the one."*

33. The matter was then adjourned to 8th December 2017. In pursuance of the earlier order passed by this Court, Respondent No.1 submitted the details of three properties, which were selected as good habitable premises for stay of Respondent No.2 and their daughter. It was submitted that, all these premises are close to the school of the daughter. The photographs of those premises were also produced on record. It was

pointed out that, all these three premises were, however, rejected by Respondent No.2 and Respondent No.1 has received the said refusal by the e-mail on 7th December 2017.

34. This Court has noted in its order that, the premises at Jairam Sadan were rejected by Respondent No.2 on the ground that, they were dilapidated and there was wooden ladder going to the first floor and it is occupied by another tenant. It was submitted that, the landlord of the premises has agreed to remove the wooden ladder. Moreover, the opening door at the entry of the ladder is locked and closed from both the sides. Therefore, nobody can come to the ground floor. Learned counsel for Respondent No.2 submitted that, the door can be opened from one side and there is no lock. Thereupon, learned counsel for Respondent No.1 informed that, the lock can be put from both the sides and the logger can also be removed.

35. The second premises shown by Respondent No.1 in Gurudev Co-op. Housing Society was rejected by Respondent No.2 on the ground that, the said premises were in the old and dilapidated building and it is opposite to SRA. Therefore, this Court observed that, the said premises may not be proper for the use of Respondent No.2 and her daughter.

36. The third premises situate in Blue Diamond Co-operative Housing

Society was rejected by Respondent No.2 on the ground that, there is a Dance Bar and Permit Room opposite to the said building. Learned counsel for Respondent No.1 has denied that, there was any Dance Bar; however, admitted that, there was a Restaurant and Permit Room opposite to the said building. It was submitted that, there was a road in between the building and there is also enough space in front of the building.

37. This Court was, after going through the photographs of all these premises, pleased to observe that,

> *"One of the premises is definitely habitable, good and safe for the livelihood of wife of Respondent No.1 and it is near to the school of the daughter."*

38. As on that day, Respondent No.2 was not present personally in the Court, this Court was again constrained to adjourn the matter to 12th January 2018, but not without observing that,

> *"Considering the dispute and the allegations made by Respondent No.2, it is unsafe for her to continue to stay in the suit premises. Moreover, the Appellants are also the sufferers on account of such allegations and, therefore, it was necessary to make such arrangement at the earliest."*

39. On 12th January 2018, Respondent No.2 was again absent and, therefore, the matter was required to be adjourned from time to time thereafter.

40. Learned counsel for the Appellants has also pointed out in this respect that Respondent No.2 has already booked a flat along with her father in 'Anantya Infinite' in the Wadhwa Group for the amount of Rs.2,14,45,200/- only. There is also one more flat transferred in her name, which is situate at Khar. The documents to that effect are produced on record at page Nos.236 and 237 of these proceedings.

41. In the backdrop of these facts and subsequent events, when this Appeal was placed for hearing, this Court has, having regard to all the above-said factual aspects, again requested the parties to go for mediation, so that the dispute can be resolved amicably, instead of keeping it pending for years together; especially when there are multiple litigations, including the police cases filed and pending between the parties.

42. However, none of the party is ready to go for mediation. Both the parties have flatly refused the said offer of going for mediation, even when this Court has repeatedly requested them to do so. According to both the parties and their learned counsel, the dispute has gone now beyond the stage of mediation and they do not want even to sit together to resolve this limited issue as to whether some suitable alternate accommodation to the satisfaction of Respondent No.2 can be made till the decision of the Suit, as Respondent No.2 is firm on her stand that she

cannot be asked to remove herself from the suit flat, it being her matrimonial home. As a result of the firm refusal on the part of Respondent No.2 to the offer or genuine effort on the part of this Court also, to resolve the dispute amicably, this Court has to decide the matter on merits. Therefore, that door stands closed.

43. A proposal was also made as to whether the hearing of the Suit, which is already expedited by the Trial Court, can be made time-bound. However, as rightly submitted by learned counsel for the Appellants, even if the hearing of the Suit is expedited and made time-bound, having regard to the scope of the litigation between the parties, the allegations and counter-allegations and the tendency on the part of Respondent No.2 of avoiding to even remain present in the Court, as can be seen in this Appeal also, the hearing of the Suit cannot be completed as expeditiously as desired. Moreover, even after the Suit is decided, as there is a remedy of First Appeal and Second Appeal, there are no chances of litigation between the parties coming to an end in the near future.

44. In this situation, allowing the Appellants, who are at the fag-end of their lives, to continue to suffer the harassment at the hands of Respondent No.2 in the twilight years of their lives, would be a cruelty to them. Moreover, if Respondent No.2 is making such allegations of sexual

molestation at the hands of Appellant No.1, then also, it becomes difficult to understand as to why she wants to continue to reside in the suit flat with the Appellants. The CCTV Camera installed in the suit flat for the safety of both the parties is also not allowed to be in working condition. This Court has also already held that, *"considering the allegations made by Respondent No.2 against Appellant No.1, it would not be in the interest of either of the parties to continue to reside together"*.

45. The Trial Court has, therefore, vide its order dated 19th July 2016, already directed Respondent No.1 to find out suitable accommodation for Respondent No.2 to her satisfaction. Now there is only the compliance of the said order, which cannot be prolonged till the decision of the Suit for the reasons stated above. This court also cannot ignore the transcript of telephonic conversation between Respondent No.2 and one Mr. Tulsiani at this prima facie stage. The said transcript shows that, the parties are ready to go at any stage to make the life of each other from worse to worst.

46. This Court, therefore, cannot close its eyes to all the realities of the litigation and the facts of the life. Continuously, the criminal cases and Police complaints are being filed against each other and there is no respite to either of the parties, including the young adolescent daughter. Hence, mere expediting the hearing of the Suit, without implementing

earlier order and thereby directing both the parties to stay together in the suit flat till decision of the litigation between them, cannot be a solution.

47. The only option, therefore, at present, available is the implementation of the order dated 19th July 2016 passed by the Trial Court, for which the present Notice of Motion is filed. Merely because in the said order, it is stated that the alternate accommodation should be to the satisfaction of Respondent No.2, Respondent No.2 cannot stretch the matter to such an extent of refusing and rejecting even more than 49 alternate premises shown to her. Some of the premises, as stated above, are found to be suitable by this Court *[Coram : M.S. Sonak, J.]* in the earlier Appeal also, being Appeal From Order No.924 of 2016, dated 22nd February 2017, and by this Court *[Coram : Mrs. Mridula Bhatkar, J.]* in the present Appeal also, as recorded in the order dated 8th December 2017. Therefore, it is not the case where Respondent No.2 is asked to accept any of the accommodation, which may not be suitable for her residence. This Court has also considered the suitability of such accommodation from her daughter's point of view. Now by rejecting all these accommodations and insisting only on her right to reside in the suit flat or in the flat at Malad, which is owned by her mother-in-law, Respondent No.2 cannot protract and prolong the agony faced by the Appellants and to some extent by her also.

48. The reliance placed by learned counsel for Respondent No.2 in this respect, therefore, on the Judgment of this Court in the case of *Mrs. Sarika Mahendra Sureka Vs. Mr. Mahendra Rajkumar Sureka and Anr., [2016] Supreme (Mah) 1215*, is, therefore, totally misplaced. The facts of the said case were quite different from the facts of the present case. In this case, the order of the Trial Court dated 19th July 2016, calling upon Respondent No.2 to vacate the suit premises or to remove herself from the suit flat on Respondent No.1's finding suitable accommodation for her within six months, is not challenged by the Respondent No.2. Moreover, from the facts, which I have stated above, no fault can be found in the said order, having regard to the allegations and counter-allegations made by the parties against each other and also having regard to the age of the Appellants. Hence, when the premises offered to Respondent No.2 are definitely *"suitable alternate accommodation"*, as found by this Court, the compliance of the order passed by the Trial Court, which is not challenged, needs to be enforced.

49. Considering all these facts on record, it has to be held that the Trial court has committed an error in dismissing the Notice of Motion filed by the Appellants, only by observing that, *"it would be just to proceed with the Suit and adjudicating the matter on merits"*. As stated above, the reality of the life of the litigation cannot be ignored; especially, when the parties are at such a logger-heads. Already more than

sufficient time and opportunity is given to Respondent No.2 to select the premises shown by Respondent No.1 to her. Even she was also given opportunity to search alternate premises on her own with the rent in the range of Rs.35,000/- to Rs.40,000/- per month, but she has not done so. Respondent No.1 has also shown his readiness and willingness to pay the rent of one year or two years in advance and subject to her vacating the suit flat, Appellants had no objection to expedite the hearing of the Suit also. This offer being bonafide and fair one, it needs to be accepted.

50. Accordingly, the Appeal is allowed. The impugned order passed by the Trial Court is set aside.

51. In pursuance of the order dated 19th July 2016, Respondent No.2 is directed to remove herself from the suit flat within a period of one month from today, by either selecting her own rental accommodation in the range of monthly rent of Rs.35,000/- to Rs.40,000/-, or, by selecting any of the alternate accommodation shown to her by Respondent No.1. Respondent No.1 to make the payment of the rent of the said alternate accommodation till the decision of the Suit.

52. Hearing of the Suit is expedited.

53. It is made clear that, in no case, the period stipulated by this Court

for Respondent No.2 to remove herself from the suit flat will be extended, as this direction is in compliance of the earlier order dated 19th July 2016 and, therefore, already more than two years time was given to her for shifting herself to the alternate accommodation.

54. In view of the above, Civil Application No.72 of 2018 pending in the Appeal does not survive and the same stands disposed off accordingly.

[DR. SHALINI PHANSALKAR-JOSHI, J.]