

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 3424-3425 OF 2005

JULIETA ANTONIETA TARCATO

Appellant (s)

VERSUS

SULEIMAN ISMAIL

Respondent(s)

(With appln(s) for interim Relief and office report)

Date: 13/02/2007 These Appeals were called on for orders today.

CORAM :

HON'BLE MR. JUSTICE B.P. SINGH

HON'BLE MR. JUSTICE H.S. BEDI

For Appellant(s)

Mr. Ranjit Kumar, Sr.Adv.

Mr. S.Guru Krishna Kumar, Adv.

Mr. S.R. Setia,Adv.

For Respondent(s)

Mr. Raju Ramachandran, Sr.Adv.

Mr. Ejaz Maqbool,Adv.

Mr. Vikas Singh, Adv.

Ms. Taruna Singh, Adv.

Mr. Abhijeet Sinha, Adv.

UPON hearing counsel the Court made the following

O R D E R

Put up for Judgment on Tuesday, the 20th February, 2007.

(Sukhbir Paul Kaur)

(Gyan Bhatia)

Court Master

Court Master

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3424-3425 OF 2005

JULIETA ANTONIETA TARCATO

...Appellant(s)

Versus

SULEIMAN ISMAIL

...Respondent(s)

J U D G M E N T

In this appeal by special leave the appellant has impugned the judgment and order of the High Court of Judicature at Bombay dated July 27, 2004 in Writ Petition No.4261 of 1991. The High Court by its impugned judgment and order allowed the writ petition filed by the

tenant-respondent herein and dismissed the application for eviction filed

by the appellant to evict the respondent from the suit premises which is a

flat located at Bandra in the city of Mumbai. While doing so, the High

Court set aside the appellate order of a bench of the Court of Small

Causes, Mumbai which had held that the landlady - appellant herein had

established her case of bonafide personal need of the suit premises.

Having regard to the finding recorded by the High Court it is no

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necessary to reproduce the facts of the case in detail but to appreciate the

findings of the High Court it is necessary to state the facts as briefly

as

possible.

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The appellant herein undoubtedly, is the owner of the suit

premises. She was residing in the suit premises till December, 1971

when she suffered burn injuries. Under the unfortunate circumstances,

since there was no male member residing with her, she moved to the

premises owned by two of her brothers namely, father Lawrence and Mr.

Tito which premises are known as Ashoka Apartments. Till then she

was residing with her mother and her brother and two of her nephews and one niece. The brother being a sailor, employed in the Merchant Navy was very often on the high seas. Brother, father Lawrence advised her sister that they should stay with him in the Ashoka Apartments. At about that time, the respondent herein was in need of accommodation since the premises occupied by him had collapsed and there was urgent need of accommodation for him and for his family members which included two brothers, both of them lawyers. Under these circumstances, on 24th or 25th January, 1972 an agreement was executed between the landlady and the respondent purporting to let out the premises on leave and licence basis on monthly rental basis of Rs.550/-. It is not disputed before us that under the amended provisions of the Tenancy Act, such a licensee has claimed the status of a tenant.

Having stayed with her brother for several years, the appellant decided not to burden her brother any further and to return to her own premises along with the family members who were earlier residing with her. Accordingly, a notice

terminating the tenancy was issued in the year 1979 and a suit for eviction followed in the year 1980. It is not necessary to refer to other legal proceedings relating to fixation of standard rent and eviction claimed on the ground of default of payment of rent. The case of the appellant was that the appellant having left the suit premises in the circumstances narrated above, she started living with her brother. However, she needed the suit premises for her own reasonable and bonafide need and also for accommodating her two nephews and her niece who always resided with her. Her nephews and niece also required sufficient accommodation to pursue the studies. The accommodation available in her brother's flat was not only insufficient but also inconvenient. She did not want herself and her nephews and niece to be a burden upon her brother, father Lawrence who was a research scholar, after enjoying his hospitality for a long time during her ailment. She submitted that she did not own any other immovable property in Mumbai nor did she had sufficient means to acquire or secure any other suitable

accommodating for herself. The respondent contested the application for eviction and denied that the appellant required the suit premises reasonably and bonafide need for her own use and occupation along with her two nephews and her niece. It was asserted that they had been residing with the appellant in the Ashoka Apartments with her brother, father Lawrence who owned a big self contained flat which had sufficient accommodation to accommodate all of them. There

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was a denial of the fact that the appellant did not own any other immovable property in Mumbai nor did she had sufficient means to acquire or secure any other suitable accommodation for herself. It was also asserted that greater hardship would be caused to him if the decree for ejection was passed.

The Trial Court framed several issues, the crucial issue being whether the plaintiff failed to prove her bonafide reasonable need of suit premises for her own use and accommodation along with her two nephews and one niece.

The Trial Court found on the basis of material on record that

the appellant had been residing in the suit premises during the years 1966-68 and later and therefore, negative the plea urged on behalf of the respondent that she used to give the suit premises to various persons on leave and licence basis. The facts found by the Trial Court also disclose that soon after the appellant had to vacate the premises in those unfortunate circumstances, the premises were given to the respondent on leave and licence basis. The defendant also was in dire need of accommodation since the premises occupied by him had collapsed. The Trial Court however, came to the conclusion that the appellant had gone to reside in the Ashoka Apartments with the intention not to come back in near future and with the intention to give the premises on leave and licence basis to earn monies therefrom. On the question of bonafide personal need, the Trial Court came to the conclusion that the appellant had claimed

possession of the suit premises alleging the suit premises reasonable and bonafide as her nephews and niece have grown up and require sufficient

accommodation which was not available in the Ashoka Apartments and

that she did not want herself and her nephews and neice to be a burden

on her brother, father Lawrence. The Trial Court observed that the

appellant had nowhere stated that she required the suit premises for her

nephews and niece who had to pursue the studies and vacation. The

Trial Court noticed that the mother of the appellant died during the

pendency of the suit and her unmarried sister also got married and was

residing with her husband at Goa. Her niece also got married and was

residing with her husband at Goa while one of her nephew Lino has

been employed in Merchant Navy while the other nephew, Brian was

studying for his M.B.B.S. Degree.

"TO BE DICTATED"

.....J.

(B.P.SINGH)

.....J.

(H.S.BEDI)

New Delhi,

February 8, 2007.

