

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**ORDINARY ORIGINAL CIVIL JURISDICTION**  
**AD-HOC NO. WP-LD-VC-20 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.

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, &**  
**SURENDRA P. TAVADE, JJ.**

**DATE : 5<sup>TH</sup> JUNE, 2020**

**P.C. :**

1. The Petitioner is 70 years of age and is an ex-government employee.

Respondent No. 1 is one of the five daughters of the Petitioner.

2. As more particularly set out in the Petition and hereinafter, it is the Petitioner's case that she is mentally as well as physically tortured by her daughter - Respondent No. 1, who is a divorcee and is forcefully residing along with her 19 year old son - Chayankk Kumar in the Petitioner's flat, being Flat No. 1504, 15<sup>th</sup> Floor, AkruliSatya CHSL., Crimson Tower, Lokhandwala Township, Kandivali (E), Mumbai-400 101, (**the said Flat**). The Petitioner has filed an Application under

Section 4 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (**'the Act'**), before Respondent No. 2 – Sub Divisional Officer, Maintenance Tribunal for Parents and Senior Citizens, on 16<sup>th</sup> March, 2020 seeking eviction of Respondent No. 1 from the said Flat. However due to the lockdown, the Tribunal is not available to decide her Application. She is therefore compelled to move this Court under its Writ jurisdiction.

3. According to the Petitioner :

i. In the year 1968 the Petitioner got married to Shri Bhayyasaheb Somkuwar. The Petitioner has five daughters from the said marriage i.e. Ms. Sujata Sawant (**'Sujata'**), Ms. Kavita Sharma (**'Kavita'**), Ms. Sarita Somkuwar (**'Sarita'**), who is Respondent No.1 herein, Ms. Kranti Gupta (**'Kranti'**) and Ms. Vaishali Mane (**'Vaishali'**). All the daughters except Respondent No. 1 are married and residing with their families. Sarita is a divorcee and is forcefully residing in the said Flat along with her son.

ii. Sarita since a teenager was indulging in wrongful acts and had friends with a criminal background. The Petitioner and her husband constantly tried to make Sarita see sense, and would often reprimand her with regard to her conduct. However, Sarita never paid any heed to their advice and was always rebellious.

iii. In the year 1998, Sarita absconded with her male friend – Ritesh Devkar (**'Ritesh'**), who also had a criminal background. She got married to him and started living at Vasai. Around February 2000, Ritesh was arrested in connection with a

scam, on allegations of defrauding poor people, by collecting certain amounts on a promise to secure them jobs in Dubai.

iv. From the year 2000, the Petitioner and her husband, along with their then unmarried daughters started residing in the said Flat. Although, the Agreement of the said Flat is registered in the names of the Petitioner and her husband, the Share Certificate issued by the Society, stands in the name of her husband.

v. In July, 2000, due to constant fights between Sarita and Ritesh, Ritesh fled from their mortgaged house in Vasai abandoning Sarita and their infant son.

vi. Sarita thereafter approached her sister – Kavita, who was then living at Shivaji Park, Dadar, Mumbai, for help, as she was afraid to approach the Petitioner and her husband, knowing that they were always against her wrongful conduct / activities. At the instance of Kavita, the Petitioner and her husband allowed Sarita to live with them in the said Flat for a few days, i.e. till she found a suitable place to live in.

vii. After living in the said Flat for a few months, Sarita secured a job in HDFC Bank. Despite her financial condition having improved, Sarita refused to leave the said Flat. Instead she started instigating her sister ‘Kranti’ against the Petitioner and her husband and tried to create differences between the family members. In view of the tactics / strategies adopted by Sarita to cause harassment, the Petitioner’s husband called Kavita and informed her about Sarita’s conduct. He also informed her that ironically Kranti is also supporting Sarita and participating in the fights

commenced by Sarita. He also asked Sarita to leave the said Flat. Instead of leaving the said Flat, Sarita threatened her father saying that, “*if you force me to leave the house then I will lodge a police complaint against you that you are molesting me*”. All the family members were shocked by the conduct of Sarita and were worried because the Petitioner’s husband was well received and respected by all and was known in the community to be a man of principles. Being afraid that Sarita would malign the image of her father, the Petitioner and her husband did not insist on eviction / ouster of Sarita from the said Flat.

viii. Thereafter, Sarita kept on administering threats to her father, who was unable to do anything since he felt totally helpless. Not only the Petitioner and her husband were harassed by Sarita, but even her son (who was a minor) started dictating terms to the Petitioner and her husband, who did not retaliate under the fear that Sarita will malign their image in society.

ix. As set out from paragraph 19 onwards in the Writ Petition, Sarita and her son not only continued to cause physical and mental harassment to the Petitioner and her husband, but Sarita also assaulted her father and once even intentionally spilt milk on the floor, as a result of which the Petitioner’s husband slipped and fractured his leg. The father of Respondent No. 1 ultimately passed away on 26<sup>th</sup> January, 2011.

x. As set out in the Writ Petition, after the demise of her father, Sarita intensified her harassment towards the Petitioner, by repeatedly making demands on her for money, which the Petitioner could not afford. However, despite the Petitioner

not having enough funds, she contributed Rs. 5 Lacs, because Chayankk, the minor son of Sarita met with an accident on 10<sup>th</sup> April, 2018, due to which he lost his left arm.

xi. In the year 2018 Sarita left her job, and thereafter with every passing day the scenario worsened and the ill-treatment and harassment meted out to the Petitioner by Sarita aggravated. Sarita started keeping the Petitioner under house arrest and did not allow her to meet anyone, including her brother, sister, neighbours, etc. Once upon coming to know that the brother of the Petitioner came to meet her, the Respondent No.1 slapped and hit the Petitioner so hard that her mouth started bleeding. Sarita also broke the cell phone of the Petitioner so that nobody could directly contact her.

xii. As set out from paragraph 27 onwards in the above Writ Petition, the Respondent No.1 also took forcible charge of the Petitioner's accounts and finances leaving the Petitioner at her mercy.

xiii. On 3<sup>rd</sup> August, 2018, the Petitioner got an opportunity to move out of the said Flat, but unfortunately she got hit by an auto rickshaw while crossing the road. She was taken to the nearby hospital. During that time, Respondent No. 1 and 'Kranti' came to the hospital to ensure that the Petitioner should not make any statement/s against them to the hospital authorities and / or the police authorities. A substantial portion of the hospital expenses were taken care of by 'Vaishali' and the rest was paid by 'Kranti'. Sarita reluctantly made payment of Rs.3,000/- towards her

medical expenses.

xiv. The Petitioner was thereafter unable to move and was almost bedridden. After coming to know about the same, her youngest daughter – Vaishali came to India in November-December, 2018 and got the Petitioner admitted to Kokilaben Hospital and conducted several tests to ascertain as to why the Petitioner is unable to move out of bed. Thereafter, Vaishali left for Singapore. The Petitioner constantly requested her daughter - Kranti and Sarita to take her to the doctor for follow-ups but they both did not pay any heed to her requests. The Petitioner developed severe infection. Her daughter Kavita, came to India from USA in April, 2019, and the Petitioner was admitted to Bombay Hospital in May, 2019.

xv. After the Petitioner returned from the Hospital, her daughter - Kavita and maid – Tara came to the said Flat and kept on ringing the doorbell for nearly half an hour. However, since nobody opened the door, Kavita sensed something fishy, and approached the police for help. Thereupon, Sarita threatened the Petitioner with physical assault and torture, and compelled her to make false allegations against Kavita, once she returned. In view thereof, when Kavita returned with the police, the Petitioner under threat and compulsion said that, “*I don't want Kavita inside the house, my life is in danger*”, hearing which Kavita was totally shocked and left the said Flat of the Petitioner.

xvi. As set out in detail in Paragraph 32 of the above Writ Petition, Sarita constantly harassed and tortured the Petitioner, after Kavita returned to the USA.

xvii. Finally in February, 2020, Vaishali came to India and on visiting the Petitioner, was shocked to see her condition. The Petitioner gathered courage to speak to Vaishali about her plight and what she had to undergo at the hands of Sarita, when nobody was around. The Petitioner narrated all the misdeeds of Sarita, i.e. how Sarita would beat her up, make her remain without clothes and give her food only once a day and snatch away her plate whilst the Petitioner was still eating. On 22<sup>nd</sup> February, 2020, the Petitioner with the help of Vaishali filed an FIR against Sarita at Samata Nagar Police Station, Mumbai, and also got published an article in the Times of India newspaper about the misconduct of Sarita.

xviii. The Petitioner was admitted to Bombay Hospital on 22<sup>nd</sup> February, 2020. After undergoing several tests, it was confirmed that the Petitioner had comminuted fracture and that her nerves were severely damaged around her shoulder and neck area, one nerve in the left arm was totally damaged, for which the Petitioner had to undergo various surgeries. She lived with a fractured shoulder and broken nerves for almost five months under house arrest by the Respondent No. 1, without even plaster or support, leave aside proper medication.

xix. Thereafter the Petitioner filed an Application under Section 4 of the Act before Respondent No. 2 – Sub Divisional Officer, Maintenance Tribunal for Parents and Senior Citizens on 16<sup>th</sup> March, 2020, seeking eviction of Sarita from the said Flat, so that the Petitioner could live the rest of her life peacefully. However, due to no fault on the part of the Petitioner and subsequent nationwide lockdown imposed by the

Government, the Petitioner was not in a position to get her Application decided. However, the fact remains that the Petitioner's youngest daughter – Vaishali, who has come to India to assist the Petitioner, needs to return to Singapore. The Petitioner is required to reside in her own Flat, but apprehends further harassment and threat to her life at the hands of Sarita. She is therefore unable to go to her own Flat. She has therefore filed the above Writ Petition seeking urgent reliefs including direction to Sarita to leave the said Flat.

4. Sarita has refuted the allegations of the Petitioner and has submitted that it is Vaishali, who is instigating the mother against her, since she wants Sarita to leave the said Flat, where she is residing since the last 20 years.

5. We have spoken through video conferencing to the Petitioner, her youngest daughter – Vaishali and also with Sarita. We are not at all convinced that the mother has filed an Application under Section 4 of the Act before Respondent No.2 Tribunal at the instance of Vaishali. After talking to the Petitioner mother, we have gathered an impression that she seriously apprehends physical and mental harassment and consequently threat to her life at the hands of Sarita, if she goes to reside in her own Flat without Sarita being evicted from the same. However, in view of the pandemic and the consequent problems that individuals are facing, we are today not passing an order directing Sarita to make alternate arrangements. However, we hereby give a stern warning to Sarita, as well as her son, that if either of them cause any harassment to the Petitioner making it difficult for her to reside in her own Flat, we



will forthwith restrain them from entering the said Flat in which the Petitioner is residing notwithstanding that Sarita may be having a small share in the said Flat, as the heir of her father. We would like to make it extremely clear, that if children cannot take care of their parent/s and allow them to live in peace, they atleast ought not to make their life a living hell. We have also assured the Petitioner that if she lives in her own Flat and faces any harassment from Sarita and / or her son, she will be provided all assistance, both by this Court, as well as by the police authorities to deal with the same. We have also informed the Petitioner and Sarita that they may immediately install CCTV Cameras in the common areas / rooms of the said Flat except bedrooms, bath / wash rooms. In the circumstances, we pass 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.

v. Stand over to 16<sup>th</sup> June, 2020.

6. 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.

**( SURENDRA P. TAVADE, J. )**

**( S.J.KATHAWALLA, J. )**