
(2021) 06 BOM CK 0030
In the Bombay High Court
Case No : Writ Petition (L) No. 11545 Of 2021

Mansoor Abdul Rahim Jaliwala	Vs	APPELLANT
State Of Maharashtra And Others		RESPONDENT

Date of Decision : 09-06-2021

Acts Referred:

Constitution Of India, 1950 — Article 21
Senior Citizens Act, 2007 — Section 23(2)

Citation : (2021) 06 BOM CK 0030

Hon'ble Judges : S.J. Kathawalla, J; Surendra P. Tavade, J

Bench : Division Bench

Advocate : Nitin Thakker, Gaurav Mehta, Chaitanya Mehta, Aamir Ali Shaikh, Drishit-Gudhaka, Kedar Dighe, Sameer Tapia

Judgement

S.J.Kathawalla, J

1. This Court (Coram : S.J. Kathawalla & N.R. Borkar, JJ.) in its Order dated 19th June, 2020, passed in the case of Mrs. Rajani B. Somkuwar vs.

Ms. Sarita Somkuwar and Another, in Writ Petition No. AD-HOC-No. WP-LD-VC-28 of 2020, has inter alia observed that :

Our country has always been proud of progeny like Shravan 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

PA - Dhuri - Jagtap 2 / 31 WPL-11545-2021.docx 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. We have before us one more Petition (i.e. the above Petition), fled by an 85 year old father in distress, who is suffering from various ailments/health

issues, including a serious heart condition requiring a pacemaker. The Petitioner has knocked on the doors of this Court at this ripe age, inter alia

seeking admission of the Writ Petition and an urgent order of this Court restraining his 50 year old son 'Ayaz' from entering / using his fat. The reason

for seeking this urgent relief according to the Petitioner is that since the last one-decade Ayaz is continuously harassing him by abusing and torturing

him. According to him, because of harassment and torture inflicted by Ayaz, including physical harm caused to him and his wife 'Nafza' (mother of

Ayaz), Nafza suffered from hypertension, brain cystitis and chronic kidney disease and ultimately lost her life on 3rd March, 2020. According to the

Petitioner, he and his wife could not gather the courage to report their plight to the appropriate authorities, as they did not want any serious

repercussions, and they also feared the social stigma in their community, till the harassment and torture at the hands of their son became 'unbearable'.

3. The plight of the Petitioner, as explained by him, is in brief set out here under :

3.1. That the Petitioner is a Senior citizen, aged 85 years, suffering from various medical issues, including a serious heart condition requiring a

pacemaker. 3.2. That he is the tenant of a residential premise, being Flat No.3, 4th Floor, Shalimar Building, 216 Marine Drive, Mumbai 400 020 ('the

said Flat'). 3.3. That the Petitioner has two children from his marriage with Nafza, i.e. son Ayaz and daughter Rubaica Jaliwala ('Rubaica'), who has

been residing in Germany since 2006, but repeatedly came to India during the sickness of her mother Nafza and is again in India since December 2020

to take care of the Petitioner who between 10th February, 2021 and 22nd February, 2021 had to be admitted in the Intensive Care Unit ('ICU') of

Jaslok Hospital due to his serious heart condition.

3.4. That the Petitioner was running a travel business in the name and style as ""Acro Agencies"".

3. 5. That Ayaz has in his letter / reply addressed to the Deputy Collector,

Department of Maintenance and Welfare of Parents and Senior Citizens

(Exhibit J at page 59 to the above Petition) described his father - the Petitioner herein, as a "compulsive liar who is also a schizophrenic and has a

narcissist attitude". The Petitioner has recorded in his letter dated 19 th April, 2020 (Page 62 of the above Petition) that Ayaz claims that the Petitioner

has done nothing for him all his life. The Petitioner has by his said letter therefore pointed out that he got Ayaz (who was born in 1970) admitted to the

St. Xavier School, and thereafter made him join Elphinstone College. He was sent to USA as a Rotary Student on a one-year International Exchange

Program in September 1987. In January 1990 Ayaz did a one-year course in Gemology conducted by the Gems and Jewellery Council of India. The

Petitioner got him membership in the CCI Club in 1992 (when he was 20 years old), and also got him membership in the Radio Club in 1992 (when he

was 22 years old). At the age of 33 years Ayaz fell in love and the Petitioner got him married in the presence of a gathering of around 200 people.

However, he divorced his wife in less than two years. The Petitioner offered him 25% share in his business - Arco Agencies, as a partner, which he

refused. The Petitioner offered him for free, a 400 sq.ft. ground floor shop in Raghunath Dadaji Street, Behind DN Road, Fort, which also he refused.

The Petitioner offered him his entire business of Arco Agencies without consideration, which he accepted and continues to run the said business till

date.

3.6. That for more than a decade, the conduct and behavior of Ayaz is rude, aggressive and abusive towards the Petitioner and late Nafza and he

would relentlessly harass and badger them. He started making accusations with respect to the Petitioner's sanity. However, the Petitioner and his late

wife did not confront him as they could not gather the courage to report the ill treatment meted out to them by Ayaz to the appropriate authorities and

they also did not want any serious repercussions for fear of social stigma in the community, till it became unbearable. 3.7. That due to constant

shouting, verbal abuse and torture meted out to the Petitioner and his late wife, in October 2017, the Petitioner's wife developed unbearable headache

and felt very uneasy. On the advice of a Neurologist, the Petitioner's wife was admitted to hospital on 28 th December, 2017. After the MRI, brain

scan and other tests, it was diagnosed that she had an 'aneurysm' that had

ruptured causing a brain hemorrhage. On 30 th December, 2017, she underwent the Digital Subtraction Angiography and coiling to treat the 'aneurysm'. After the said procedure the Petitioner's wife was in ICU for 6 days and was later discharged on 8th January 2018. The medical report of the Petitioner's late wife is annexed and marked as Exhibit ""B"" to the Petition.

3.8. That even after Nafza (mother of Ayaz) was discharged, Ayaz continued his abusive behavior towards the Petitioner and Nafza. 3.9. That on 7th

September, 2018, Nafza visited CCI Club to meet her mother's sister, who at that time was 90 years old. Ayaz saw them sitting and talking to each

other. Later that evening, Ayaz started hurling abuses at his mother Nafza only because she had met her aunt. He went to the extent of slapping her

in front of the Petitioner. When she tried to resist, Ayaz pushed her and she fell to the floor. When the Petitioner tried to help her, Ayaz pulled the

Petitioner to hit him, tore his kurta and further threatened the Petitioner and the late Nafza of dire consequences.

3.10. That therefore, after suffering the mental torture and verbal abuse for so many years, the Petitioner finally lodged a Police complaint on 08 th

September, 2018 with the Senior Inspector of Police, Marine Drive Police Station, against Ayaz. A copy of the Complaint dated 08 th September,

2018 is annexed and marked as Exhibit ""C"" to the Petition.

3.11. That pursuant to the Petitioner lodging the said Complaint, Ayaz refused to come to the Police Station and in fact, told the Petitioner that he

knows some Senior Police Officers and would get away with it. Despite the said Complaint, the Police Officers neither called Ayaz to the Police Station,

nor have they taken any action against him. In fact, after the lodging of the Complaint, the behavior of Ayaz towards the Petitioner and Nafza became

more abusive. 3.12. That on 08th April, 2019, when the Petitioner and Nafza were watching TV, Ayaz abused and shouted at the Petitioner and

Nafza to lower the volume of the TV. Ayaz then threw the TV remote control which ultimately broke. Owing to this violent behavior of Ayaz, the

Petitioner lodged another Complaint on 10th April, 2019 with the Marine Drive Police Station. According to the Petitioner, even on this Complaint,

Respondent No.3 has failed to take any action against Ayaz.

3.13. The family members/ relatives did try to mediate with the intention to

settle / resolve the issues which was attended by the Petitioner and Ayaz.

However, due to the arrogant attitude of Ayaz, no settlement could be reached.

3.14. That in view of the aggressive and abusive behavior of Ayaz, no maid works in the said Flat beyond a few months. Consequently, the Petitioner faces tremendous hardship, as the Petitioner on occasions does not get the support/domestic help he needs for purposes of cooking, cleaning and assistance for his day-to-day needs, including his meals and medication.

3.15. That the constant cruel behavior/conduct of Ayaz has resulted in severe adverse health effects on the Petitioner. Faced with relentless abuse by

Ayaz and complete inaction on the part of the Police Officials of Marine Drive Police Station, the Petitioner, on 12th July, 2019, filed an Application

before the Deputy Collector, Department of Maintenance and Welfare of Parents and Senior Citizens, under the Maintenance and Welfare of Parents

and Senior Citizens Act, 2007 ('the Act') setting out his plight and seeking eviction of Ayaz from the said Flat.

3.16. That pursuant to the said Application dated 12th July, 2019, made by the Petitioner, the Respondent No.1 issued Summons on 03 rd August, 2019

to Ayaz (which he received on 07th August, 2019), informing him that the hearing will take place on 17th September, 2019, when he should remain

present alongwith his response/reply and that if he fails to appear on that day, the Respondent No.1 shall proceed to decide the matter ex-parte.

However, no effective hearing took place on the date fixed for hearing.

3. 17. That Ayaz thereafter received another Summons dated 05 th November, 2019 from the Respondent No. 1 with regard to the Application dated

12th July, 2019 filed by the Petitioner.

3.18. That Ayaz addressed a Letter dated 29th November, 2019 to Respondent No.1 wherein he recorded that he had received the Summons on 26 th

November, 2019. By his said Letter, Ayaz has for the first time, now alleged that the facts qua the proceedings filed against him by his father are

unknown to him. He requested the Respondent No.1 to inform him about the nature of inquiry / discovery which is sought from him and the

documents which he is supposed to produce with respect to the alleged claim of his father, in order to file an appropriate reply. In the said Letter, Ayaz

stated that he has just received the Summons, which is a complete shock to him and he will require some time to gather some information/documents

and therefore, the hearing should be adjourned for three weeks.

3.19. That Nafza passed away on 3rd March, 2020. Her entire medical expense was borne by the Petitioner himself. However, there has been no

behavioral change in Ayaz even after the demise of his mother. 3.20. That in March 2020, the Government of India announced a nation- wide

lockdown on account of coronavirus. Throughout the lockdown till date, the Petitioner had to live with Ayaz in the said Flat. During this time, the

Petitioner continued to suffer at the hands of Ayaz.

3.21. That the Petitioner had a maid, named, Ayesha who stayed in the said Flat round the clock and attended to the domestic needs of the Petitioner.

Later, Ayesha wanted to work only during the day (and not 24/7) for her own personal reasons. Therefore, the Petitioner requested her to find another

job as he would require someone who could stay in the said Flat and work. Though Ayaz does not contribute towards any expense in running the

household, yet when Ayaz came to know about this fact, he started verbally abusing and shouting at the Petitioner and stated that there is no need for

a full-time maid.

3.22. That on 30th September, 2020 when the pandemic was still on, Ayaz was not keeping well. The Petitioner as a worried father and as a person

with recognized co-morbidities, requested Ayaz to isolate himself and get the covid test done. However, instead of isolating himself, Ayaz burst out

with rage and started verbally abusing the Petitioner and using vulgar language against his sister. When the Petitioner informed Ayaz that he will be

informing the Municipal Corporation about the same, Ayaz dared him to do so, by stating that he has enough contacts in the Municipal Corporation.

The above conversation between him and Ayaz has been recorded on an audio disk which is annexed and marked Exhibit 'H' to the above Petition.

3.23. That the behaviour of Ayaz never improved but worsened with each day. However, the Petitioner could not even approach the Tribunal as the

same was not functioning during that time.

3.24. That for the period between September 2020 and October 2020, Rubaica, the Petitioner's daughter visited Mumbai to take care of the Petitioner.

From 23rd December, 2020, Rubaica is temporarily in Mumbai taking due care of the Petitioner.

3.25. That in February 2021, the Petitioner complained of breathlessness. He was

therefore admitted to the ICU at Jaslok Hospital and was discharged on 22nd February, 2021. The Discharge Report is annexed and marked as Exhibit ""I"" to the Petition, which shows the serious health problems suffered by the Petitioner.

3.26. That on 3rd March, 2021, i.e. the first death anniversary of the Petitioner's wife Nafza, as per the Bohri custom the Petitioner and his daughter made a list of friends and family members to whom they intended to send food packets. The Petitioner had requested Ayaz to suggest names as well.

However, he did not suggest any names and claimed to have no interest in this religious tradition. As a part of this distribution, the food was also distributed to a close friend of Ayaz who had helped the Petitioner a lot when Nafza passed away. On learning of this, Ayaz (who had not participated/assisted in the said tradition) aggressively demanded to know why a food packet was not sent to another person in his circle of friends.

The Petitioner subsequently sent a food packet to this additional person as well, fearing further abusive treatment by Ayaz.

3.27. That on 20th March, 2021, Respondent No.1 once again issued a Summons directing Ayaz to appear before it on 31st March, 2021 with regard to the Petitioner's Application. Respondent No.4 Ayaz by his Letter dated 26 th March, 2021 (wrongly dated as 30th March, 2021) replied to the said Summons, made several baseless and false allegations against the Petitioner and sought further time of 30 days to gather documents.

3.28. That thereafter, on 1st April, 2021, a hearing took place at the Office of the Respondent No.1, wherein the Petitioner, Ayaz and Rubaica were present. It was informed by the Respondent No.1 to the Petitioner that after a week, a home visit will be conducted by the Office of the Respondent No.1 and the matter was adjourned to 16th April, 2021. However, till date neither any home visit has been conducted by the Office of the Respondent No.1, nor any hearing was conducted on 16th April, 2021 and it was informed by Respondent No.1 that the Tribunal was not functioning due to the Covid-19 Pandemic.

3.29. That since the verbal abuse and torture of Ayaz did not stop, the Petitioner by his Letter dated 19th April, 2021 addressed to Respondent No.1, once again requested the Respondent No.1 to take immediate steps to evict Ayaz from the said Flat.

3.30. That on 20th April, 2021, at the instance of Respondent No.1, Rubaica had given a Letter of undertaking to Respondent No.1 that she will take care of the Petitioner's health, well-being and comfort.

3.31. That the Petitioner through his Advocates addressed a Letter dated 5th May, 2021 to the Respondent No.2 - The Commissioner of Police

Mumbai and Respondent No. 3 - The Senior Inspector of Police, Marine Drive Police Station, wherein after referring to some of the aforesaid facts,

the Advocates for the Petitioner called upon the Respondent Nos.2 and 3 to forthwith take appropriate action against Ayaz.

3.32. That the Petitioner, by his Advocate's Letter dated 7th May, 2021, requested the Respondent No.1 for an early and efficacious hearing and to take prompt and immediate action to evict Ayaz.

3.33. That on account of the ongoing Covid-19 Pandemic, the Petitioner has been informed that no hearings of the Tribunal under the Act are taking

place. 3.34. That in spite of the continuous harassment being meted out to the Petitioner by Ayaz, no concrete action is being taken by the Respondent

Nos.1 to 3, though they are duty bound to do so. The various acts of harassment, intimidation, threats and abuses of Ayaz against the Petitioner do not permit him to live a peaceful life, with security and dignity and amounts to violation of his "Right to Life" under Article 21 of the Constitution of India.

3.35. That the Petitioner has been waiting patiently for a hearing since 12 th July, 2019. However, over 20 months have passed but the Application

before the Respondent No.1 is still pending. The Petitioner is unable to bear the harassment anymore and he has no other alternative and efficacious

remedy but to move before this Court.

4. The above Writ Petition is therefore fled by the Petitioner on 10 th May, 2021 before this Court seeking various reliefs including an urgent relief to

order / direct Ayaz to forthwith vacate/remove himself from the said Flat and not to re-enter, obstruct and/or interfere in any manner whatsoever with

the Petitioner's possession, peaceful use and occupation of the said Flat.

5. The above Writ Petition was placed on our Board on 17th May, 2021.

6. On 17th May, 2021 the Learned Senior Advocate representing the Petitioner appeared alongwith the Petitioner and pointed out the aforestated

facts. He submitted that the Petitioner because of the aforestated conduct of Ayaz, is afraid to stay in his own house with Ayaz and is forced to reside

elsewhere in a hotel. In view thereof, it has become absolutely necessary to order /direct Ayaz to forthwith vacate / remove himself from the said Flat

and not to enter, obstruct and / or interfere in any manner with the Petitioner's possession, peaceful use and occupation of the said Flat.

7. In response, Ayaz who appeared in person submitted that all the allegations made in the Petition are incorrect. He submitted that by his Letter dated

30th March, 2021 he has already denied and disputed the allegations made against him by the Petitioner in his Application dated 12 th July 2019 fled

before the Respondent No. 1 and that his Reply is annexed by the Petitioner himself at page 59 of the above Petition. He submitted that his father is

leading towards insanity. He submitted that he does 'sometimes' contribute towards household expenses. He submitted that his father has not done

anything for him. The travel business which was managed by his father and which his father claims to have handed over to him without any

consideration, was a defunct business and his father at the time of handing over his business to him, was infact selling items like umbrellas, etc. He

also informed the Court that in view of Covid-19, his travel business has absolutely stopped and even before that he was not doing well in business and

is therefore not having enough funds to leave the said Flat and stay elsewhere. He further submitted that his father wants him out of the said Flat

because he is being instigated by his sister who wants the entire said Flat to herself.

8. This Court thereafter enquired from the Petitioner, who was present through video-conferencing alongwith his Advocates, whether the Petitioner

wishes to respond to the submissions/allegations made by Ayaz. In response the Petitioner informed us that everything stated by him in the Petition is

true and correct. He stated that it does not give him any joy to make allegations with regard to the conduct of his own son during the last few days of

his life. He has informed us that he has serious health problems and he is unable to bear the ill treatment i.e. harassment, torture and abuse at the

hands of Ayaz even for a single day. He informed the Court that he is the sole tenant in respect of the said Flat and is entitled to die in his fat

peacefully without being harassed and tortured by his son who has made his life miserable since the last 10 years and because of whose continuous

harassment and physical torture, his wife Nafza lost her life. He further submitted that because of such ill treatment on the part of Ayaz and the fear

of staying with him in the same house he is forced to take shelter in a hotel. He has also informed us that since Ayaz has no justification for his unpardonable conduct, he has chosen to allege that his father is leaning towards insanity and is wanting him out of the house at the instigation of his sister Rubaica, who wants to be in possession of the entire flat. He submitted that to establish that this allegation is false and incorrect to the knowledge of Ayaz, he is willing to give an undertaking to this Court that he will at no point of time surrender his tenancy and after his demise, his tenancy will devolve on his legal heirs including Ayaz. He has further submitted that despite Ayaz being a 50 year old educated and able-bodied person, and despite him having the temerity to call his father "a compulsive liar who is also a schizophrenic and has a narcissist attitude", since Ayaz has stated that he is not having sufficient means to go and stay elsewhere, the Petitioner without admitting the correctness of the said statement, only to buy peace for the remainder of his life, is willing to give him a lumpsum amount of Rs.25 Lacs, to enable him to stay on leave and license basis in some independent premises.

9. Since the Petitioner is found to be of sound mental health, we turned to Ayaz and asked him why he should not arrange for his stay by taking some place on leave and license basis from the amount offered to him by his father, without losing his claim on tenancy after the demise of his father. Left with no answer, Ayaz told us that we should give him time to collect documents. We pointed out to Ayaz that from the chronology of events starting from 12 th July, 2019, when his father filed an application / complaint before the Department of Maintenance and Welfare of Parents and Senior Citizens, and his correspondence thereafter with the said Department, we have noted that whenever the Application was placed for hearing, he has tried to stall the same on the ground that he has to collect documents and file his reply. However, he is not ready with a single document in the last about 20 months. Left with no answer, Ayaz now submitted that we (the Court) have no right to direct him to leave the said Flat and once again sought time to file documents. In view of such conduct, we refused to communicate with Ayaz any further and directed him to appear before the Court on 19 th May, 2021 alongwith his Advocate and to also file his Affidavit / documents.

10. On 19th May, 2021, Advocate Shri Samir Tapia, represented Ayaz and on instructions once again sought time to produce documents. We pointed out to Advocate Tapia that the question of adjourning the Application seeking urgent relief by the Petitioner on the ground of production of documents by Ayaz does not arise, since the same was the modus adopted by Ayaz since the year 2019 to stall the proceedings before the Department of Maintenance and Welfare of Parents and Senior Citizens, and also pointed out that the Petitioner who is the 85 year old father of his client Ayaz, cannot be made to suffer any longer and deserves to stay peacefully in his own house during the twilight years of his life. We also pointed out to Advocate Tapia that the undertakings which the Petitioner has offered to give to protect Ayaz, who has an apprehension that his sister wants to usurp the entire Flat and the offer of the Petitioner to give financial assistance of Rs. 25 Lakhs to Ayaz, goes to prima facie show that the grievance of the Petitioner against Ayaz is genuine and that the Petitioner has only one desire left, that is, to live the remainder of his life peacefully in his own house. We therefore urged Advocate Tapia to speak to the Advocates representing the Petitioner and understand the plight of the Petitioner as well as his proposal. Advocate Shri Tapia agreed to do so and the matter was placed on 20th May, 2021 at 11.00 a.m.

11. On 20th May, 2021, we were informed that the proposal made by the father was not acceptable to Ayaz. Based on the without prejudice talk which were earlier held between the Parties and their Advocates, we made certain suggestions. However, the same were not acceptable. Advocate Tapia, on behalf of Ayaz, once again sought time to file documents. We therefore enquired from Advocate Tapia as to what documents Ayaz wishes to rely on since the year 2019, and that except for denials, what is Ayaz wanting to state on Affidavit. When we informed Advocate Tapia that we are ready to treat all the statements / submissions made before us on instructions as statements / submissions made on Affidavit, the tenor of the submission of Advocate Tapia immediately changed, and he questioned the Court as to what proof the Court had, that Ayaz was misbehaving with his father. The Court in turn had to question Advocate Tapia as to what proof is expected from any old, feeble and helpless parent/s whose child / children ill-treats and misbehaves with them within the four walls of their house, when no other person is around. Of course, as expected, there was no answer from

Advocate Tapia.

12. It will not be out of place to point out here, that in the present case, infact an audio recording is produced by the Petitioner alongwith his Petition

which bears testimony to the rude and abusive language used by Ayaz shouting at the top of his voice, when in September 2020, his father in view of

Ayaz being unwell had requested him to get his Covid test carried out and isolate himself for a few days. In fact, the language used by Ayaz against

his sister does not permit us to transcribe the same on paper, but we would only say that the same needs to be heard to be believed.

13. From the above facts, it is clear that the Petitioner is a senior citizen aged 85 years sufering from various medical ailments, including a serious

heart condition requiring a pacemaker. The Petitioner is the tenant of the said Flat. His family comprised of his wife Nafza (who passed away on 03

rd March, 2020), their son Ayaz (born on 15th November, 1970) and their daughter Rubaica (born on 01st April, 1972). Rubaica, who is residing in

Germany since 2006, repeatedly came to India during the sickness of her mother Nafza and is again in India since December 2020 to take care of the

Petitioner.

14. According to the Petitioner, Ayaz who resided with him and Nafza started ill-treating the Petitioner and Nafza (his parents) since the last one-

decade by continuously harassing and torturing them by being rude, aggressive and abusive towards them and also made accusations with respect to

the Petitioner's sanity. We fnd substance in the contention of the Petitioner that he and his late wife did not confront Ayaz as they could not gather the

courage to do so, and to report the ill- treatment meted out to them by Ayaz to the appropriate authorities fearing serious repercussions, and the social

stigma they may face in their community, till it became unbearable. It is not unknown that parents out of fear of harming their family name and the

future and reputation of their erring child / children prefer to sufer in silence, rather than expose the ill-treatment meted out to them by their child /

children, until they cannot bear it any further. In fact, as the parent/s grow older, they fnd it difcult, rather impossible, to bear such conduct, leaving

them with no alternative but as a last resort to knock on the doors of the Courts seeking help / respite, in the twilight years of their life.

15. Parents normally also do not wish to make public /proclaim all that they have

done for their children. However, when a child / children proclaim that their parents have not done anything for them and in fact proceed to describe their parent/s in a nasty / uncalled for manner, like Ayaz calling his father a ""compulsive liar who is also a schizophrenic and has a narcissist attitude"", that parent/s are compelled to spell out all that they have done for their child / children, in order to enable them to achieve major milestones in their life / lives. The Petitioner, in the present case, has therefore in his Letter dated 19 th April, 2020 addressed to the PA-Dhuri - Jagtap 19 / 31 WPL-11545-2021.docx Respondent No. 1 (Page 62 of the above Petition), set out some details which belies the contention of Ayaz that his father has not done anything for him, which details are more particularly set out also in paragraph 3.5. hereinabove.

16. The conduct of Ayaz towards his parents, as pointed out by his father (the Petitioner), is in detail set out hereinabove. The same need not be repeated again. However, some of the disturbing facts / instances set out by the Petitioner are as under :

16.1. Ayaz caused physical harm to the Petitioner and his wife Nafza (mother of Ayaz) who suffered from hypertension, brain cystitis and chronic kidney disease and ultimately lost her life on 03rd March, 2020 (Paragraphs 2, 3.7 and 3.9 above).

16.2. That after the Petitioner and his wife became victims of physical assault by Ayaz, the Petitioner for the first time lodged a police Complaint on 08 th September, 2018 with the Senior Inspector of Police, Marine Drive Police Station, against Ayaz. (Paragraph 3.10 and 3.11 above).

16.3. Watching TV is a very important source of entertainment for senior citizens whose movements become restricted due to their advanced age.

Since they are hard of hearing, they need to raise the volume of the gadgets like TV, radio etc. On 08th April, 2019, Ayaz enraged by the high volume of the TV, abused and shouted at the Petitioner and Nafza and asked them to lower the volume, and thereafter in a fit of rage, threw the TV remote control, which broke, once again compelling the Petitioner to file a Complaint on 10 th April, 2019. (Paragraph 3.12)

16.4. It cannot be disputed that an 85 year old senior citizen with serious health problems would need a domestic helper 24 x 7. On account of Ayaz's aggressive and abusive behaviour, the Petitioner was also deprived of such

domestic help, since such help would not work beyond a few months.

(Paragraph 3.14 and 3.21 above).

16.5. On 30th September, 2020 when the pandemic was still ongoing, Ayaz was not keeping well, the Petitioner with recognized co- morbidities

requested Ayaz to isolate himself and get the Covid test done. However, Ayaz instead of isolating himself burst out with rage and started verbally

abusing the Petitioner and has used such vulgar language against his younger sister, which cannot be transcribed herein, and needs only to be heard to

be believed. When the Petitioner informed Ayaz that he will be informing the Municipal Corporation about the same, Ayaz dared him to do so, by

stating that he has enough contacts in the Municipal Corporation. (Paragraph 3.22 and 12 above and the audio recording which is annexed and marked

as Exhibit 'H' page 50 to the Petition).

17. As stated by the Petitioner, the constant cruel behaviour / conduct of Ayaz took a serious toll on the health of the Petitioner. Faced with relentless

abuse by Ayaz, and complete inaction on the part of the Police Officials, the Petitioner on 12th July, 2019 filed an Application before the State of

Maharashtra through the Deputy Collector, Department of Maintenance and Welfare of Parents and Senior Citizen, under the Maintenance and

Welfare of Parents and Senior Citizens Act, setting out his plight and seeking eviction of Ayaz from the said Flat. Consequent thereto, the Respondent

No. 1 on 03 rd August, 2019 issued Summons to Ayaz informing him that the hearing will take place on 17 th September, 2019 when he should remain

present alongwith his response / reply, failing which Respondent No. 1 will proceed to decide the matter ex-parte. The acknowledgement on the

Summons shows that Ayaz has received the same on 07 th August, 2019. Upon repeated inquiry by this Court on 21 st May, 2021 with the Advocate

for Ayaz as to whether Ayaz had received a copy of the Petitioner's Application / Complaint dated 12th July, 2019 on 07th August, 2019 alongwith the

Summons dated 03rd August, 2019 requiring Ayaz to appear before the Respondent No. 1 on 17th September, 2019, Ayaz after trying to avoid giving

an answer, ultimately admitted that a copy of the Complaint dated 12 th July, 2019 was received by him on 07th August, 2019 alongwith the Summons

from Respondent No. 1 dated 03rd August, 2019. Thereafter Ayaz received one more Summons from Respondent No. 1 to appear before the

Respondent No.1. By his Letter dated 29 th November, 2019, Ayaz pretended that he has just come to know for the first time that his father has fled proceedings against him, the facts of which are unknown to him, and to buy further time, asked for details as to the nature of inquiry / discovery which is being sought from him and the documents which he is supposed to produce with respect to the alleged claim of his father, in order to file an appropriate reply. He has in the said Letter further falsely recorded that since he has just received the Summons he is in a state of complete shock and will require some time to gather the necessary information / documents and therefore the hearing be adjourned for 3 weeks. In view of Ayaz having already acknowledged receipt of the Summons dated 3 rd August, 2019 on 07th August, 2019 and after some hesitation having admitted in Court on 21 st May, 2021 that he had received a copy of the Application / Complaint dated 12th July, 2019 on 07th August, 2019 alongwith the Summons dated 03 rd August, 2019, the same goes to show that Ayaz has by his Letter dated 29th November, 2019 attempted to create a completely false record claiming that he has received the Summons for the first time in November 2019 and is in complete shock, only with a view to delay the hearing before the Respondent No. 1. Ayaz being a well-educated person needed no clarification from Respondent No. 1 as to what is the inquiry which the Respondent No. 1 sought to carry out upon receipt of the Petitioner's Complaint dated 12 th July, 2019 against Ayaz, more so when the said Complaint speaks for itself. Moreover, it is not for the Respondent No. 1 to advise him as to what documents he is supposed to produce with respect to the grievances of his father along with his reply. The entire contents of Ayaz's Letter dated 29th November, 2020 were therefore orchestrated with the sole view to delay the hearing of the Complaint filed against him by his father before the Respondent No. 1.

18. Thereafter, nothing transpired before Respondent No. 1 upto 20 th March, 2021, when Respondent No. 1 once again issued a Letter to Ayaz directing him to appear on 31st March, 2021 with regard to the Petitioner's Application / Complaint. Respondent No.4 by his Letter dated 26 th March, 2021 (wrongly dated as 30th March, 2021) replied to the said Summons. From the said Reply, it is once PA-Dhuri - Jagtap 23 / 31 WPL-11545-2021.docx again clear that Ayaz was in possession of a copy of the Complaint dated 12 th July, 2019 filed by the Petitioner. He has in his reply to the

Complaint, denied the allegations made by his father and alleged that his father is ""a compulsive liar who is also a schizophrenic and has a narcissist attitude"". He once again attempted to delay the hearing of the matter by asking the Respondent No. 1 to send him a full copy of the NC fled by his father so that he can reply to the 'false complaints with adequate proof' and 'prove his innocence'. Ayaz who had received the Summons along with the Complaint for the first time on 07 th August, 2019 has even after a period of two years, vide his Letter dated 30 th March, 2021 sought 30 days time from the Respondent No.1 to prepare / produce documents to support his case and has also sought reply to his Letter dated 29th November, 2019, which as stated earlier was a mere pretense to waste time in the matter, and delay the hearing of the Application / Complaint fled by his father on 12th July, 2019.

19. On 1st April, 2021, a hearing took place at the Ofce of the Respondent No.1, wherein the Petitioner, Ayaz and Rubaica were present. It was informed by the Respondent No.1 to the Petitioner that after a week, a home visit would be conducted by the Ofce of the Respondent No.1 and the matter was adjourned to 16th April, 2021. However, till date neither any home visit has been conducted by the Ofce of the Respondent No.1, nor any hearing conducted on 16 th April, 2021 and it was informed by Respondent No.1 that the Tribunal is not functioning due to Covid-19 Pandemic.

20. The Petitioner once again by his Letter dated 19 th April, 2021 addressed to Respondent No. 1, requested Respondent No. 1 to take immediate steps to evict Ayaz from the said Flat. The Petitioner through his Advocate's Letter dated 5th May, 2021 addressed to the Commissioner of Police, Mumbai, and the Senior Inspector of Marine Drive Police Station, Mumbai, called upon them to forthwith take appropriate action against Ayaz. 21.

The Petitioner by his Advocate's Letter dated 07 th May, 2021, once again requested Respondent No. 1 for early and efficacious hearing and to take prompt and immediate action to evict Ayaz from the said Flat.

22. The Petitioner has therefore waited patiently for hearing since 12 th July, 2019. He has knocked on all the possible doors right since the year 2018 complaining about the harassment, intimidation, threats and abuses on the part of Ayaz, which also violate the Petitioner's ""Right to Life"" guaranteed under Article - 21 of the Constitution of India, by depriving him of a peaceful

existence with security and dignity. Having not received any favorable response / relief in the last several years, the Petitioner was left with no alternative, but to knock on the doors of this Court and has moved for urgent reliefs on the ground that he cannot be expected to suffer any further ill-treatment at the hands of Ayaz and the Court should restrain Ayaz from entering the said Flat.

23. Ayaz has tried to play the same trick with this Court which he has successfully played before Respondent No. 1 since August, 2019, i.e. to seek time on the ground that he is in the process of collecting documents. Keeping in mind the modus operandi of Ayaz, we had made it clear on 17 th May, 2021 itself, that Ayaz may file his Affidavit by 19 th May, 2019. Ayaz was also free to produce whatever documents he wanted to produce before the Court. However, he failed to do so. When he was questioned by the Court as to why his father should make such serious allegations against his own flesh and blood during the twilight days of his life and would want his son to stay away from him, Ayaz submitted that his father wants him to be out of the said Flat at the instigation of his sister who wants to usurp the entire Flat after his demise.

25. In the Order dated 19th June, 2020, passed in the case of Mrs. Rajani B. Somkuwar vs. Ms. Sarita Somkuwar & Anr. (supra), this Court has inter alia dealt with the conduct of the parents in some cases, which maybe a result of overreaction at the instance / provocation of the legal heirs / children. Paragraph 3 of the said Order is reproduced hereunder :

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.

We therefore interviewed the Petitioner, who we found to be an understanding, matured octogenarian of sound mind and whose detailed response is

set out in paragraph 7 hereinabove. The maturity of the Petitioner is borne out by the fact that despite the abovementioned harassment suffered by him

at the hands of his son Ayaz, the Petitioner immediately offered to give an undertaking to this Court that he will at no point of time surrender his

tenancy, so that after his demise the tenancy in regard to the said Flat will devolve on his heirs, which of course will include Ayaz. If the Petitioner in

fact wanted Ayaz to leave the said Flat to enable Rubaica to get the same, the Petitioner would never have agreed to give such an undertaking

inter alia protecting the interest of Ayaz after his demise. This conduct of the Petitioner itself totally belies the false and baseless allegation levelled by

Ayaz that his father is acting at the instance of his sister - Rubaica.

25. Ayaz has further contended that his financial condition is not sound and therefore he does not have sufficient means to stay elsewhere. In response

thereto, the Petitioner submitted that despite Ayaz being an educated, able-bodied person and despite Ayaz having the temerity to describe his father

as ""a compulsive liar who is also a schizophrenic and has a narcissist attitude"", the Petitioner without admitting that Ayaz does not have sufficient funds

to stay elsewhere, is willing to give him a lumpsum amount of Rs.25 Lacs to enable him to stay on leave and license basis in an independent premise.

26. When this Court pointed out to Advocate Tapia representing Ayaz that in the Application / Complaint dated 12 th July, 2019 filed by the Petitioner

before the Respondent No. 1 pointing out the ill-treatment meted out to him by Ayaz, Ayaz has been asking for time to produce necessary documents

since the last about 20 months, and since the same modus is now sought to be adopted before this Court, Ayaz should at least inform the Court as to

which documents he wishes to rely upon, and whatever submissions Ayaz wishes to make he may proceed to do so and the same will be treated as

the statements/ submissions made by Ayaz on Affidavit, the tenor of the submission of Advocate Tapia immediately changed and he questioned the

Court as to what proof does the Court have, that Ayaz is misbehaving with his father. The Court had to in turn question Advocate Tapia as to what

proof is expected from any old feeble and helpless parent whose child illtreats and misbehaves with him within the four corners of their house, when

no other person is around i Though Advocate Tapia did not make any further submission in this regard, we have noted that in the instant case the

Petitioner has produced enough material / evidence in the form of Police Complaints, the Complaint made before Respondent No. 1 - Department of

Maintenance and Welfare of Parents and Senior Citizens and most importantly the audio recording produced by the Petitioner showing the rude and

abusive language used by Ayaz whilst shouting at the top of his voice when his father, in view of Ayaz being unwell requested him to get his Covid

test carried out and isolate himself for a few days. In fact, as stated earlier, the vulgar language used in the said audio recording by Ayaz against his

younger sister, should put any respectable person to shame, and in fact helps us believe the plight of the Petitioner.

27. We are therefore prima facie satisfied that the Petitioner who is 85 years old and suffering from several health problems, including a serious heart

condition, is being harassed by Ayaz, which has made it impossible for him to stay with Ayaz in his own house i.e. the said Flat. According to us, Ayaz

crossed all limits when he made accusations against the Petitioner with regard to his sanity even before this Court. We, after talking to the Petitioner,

are convinced that the Petitioner is a matured person with a sound mind, who has no motive to keep Ayaz out of the said Flat, except for his desire to

spend the twilight days of his life peacefully, without being harassed by his only son. Despite the bad behaviour of Ayaz, the Petitioner has shown

grace by not wanting to deprive him of his tenancy rights after his demise, and has in order to buy peace also offered to pay an amount of Rs 25 lakhs

to Ayaz to reside elsewhere on leave and license basis. Needless to clarify that even during the pandemic, there is no dearth of premises being

available on leave and license basis.

28. As held by the Apex Court in the Case of Smt. S. Vanitha vs. The Deputy Commissioner, Bengaluru Urban District¹, under Section 23(2) of the

Senior Citizens Act, 2007, the Tribunal has the requisite jurisdiction and authority to Order eviction of a child or relative of a senior citizen from the

Property of the senior citizen, where there has been a breach of the obligation of such child or relative under the Act to maintain the senior citizen.

Maintenance of a senior citizen has been held by our Courts to include not just right to live, but the right to live with dignity and in an atmosphere of safety and security. If that right is 2020 SCC Online SC 1023 PA-Dhuri - Jagtap 29 / 31 WPL-11545-2021.docx breached by a child or a relative, who is enjoined by the Act to maintain the senior citizen, the Tribunal is empowered to Order appropriate remedial measures to ensure his maintenance, which, as we have noticed above, includes eviction of the child or the relative, as the case may be, from the property of the senior citizen. We have no doubt prima facie that Ayaz has been in breach of his obligation to maintain his father - the Petitioner herein. The Tribunal, having the requisite authority to Order eviction of Ayaz, has been inactive or inefcacious in the matter of disposal of the Petitioner's Application for eviction. This Court, in the premises, is duty bound to hear the matter and pending such hearing, grant such interim relief as the justice of the case may demand in aid of the main relief sought in the Application. Just as the Tribunal acts in the matter of any such Application in a summary manner with all powers of a Civil Court, so would this Court consider the merit of the Application in a summary manner without requiring formal proof of the allegations of the senior citizen as ordinary Civil Courts would demand. As we have noted above, there is adequate material before us to prima facie conclude the breach on the part of Ayaz in maintaining the Petitioner. We are of the clear view that the justice of the case demands eviction of Ayaz from the Petitioner's house / said Flat with a view to protect the father's right of maintenance under the Act. Ayaz, in any event has not even a semblance of right to the said Flat in question. He has not even suggested any. He can, if at all, live there only with leave of the Petitioner, who does not choose to and in the circumstances be expected to grant it. The Petitioner, in the premises, deserves an immediate interim relief of eviction of Ayaz from the said Flat.

29. As set out at length above, the Petitioner has been knocking on the doors of all the concerned authorities since the year 2018, with a sole prayer that he be allowed to live in peace in his own house, and having failed to get any respite/ relief from the said authorities, in exasperation has now knocked the doors of this Court seeking reliefs. In our view if the relief as sought by the 85 year old Petitioner is not granted to him, he will not be able to continue to reside in his own house, thereby causing grave harm, injury, prejudice and injustice to him, which may cost him his life especially in view

of his frail health. As against this Ayaz who is a 50 year old educated and able-bodied person would be able to stay elsewhere on leave and license

basis for which his father has gracefully agreed to give him funds to the extent of Rs 25 lakhs. Even otherwise the balance of convenience is

overwhelmingly in favour of the Petitioner. In the above circumstances, we pass the following Order :

i. Rule. Rule made returnable on 30th August, 2021.

ii. Ayaz shall within a period of 4 weeks from the date of uploading of this Order vacate the said Flat of which the Petitioner is the sole tenant and

until further Orders shall not enter / use the said Flat.

iii. The Petitioner shall without prejudice to his rights and contentions pay a sum of Rs 50,000/- per month to Ayaz from the day he vacates the said

Flat to enable him to stay elsewhere until the Writ Petition is finally heard on 30th August, 2021 or thereafter.

iv. The undertaking of the Petitioner that he will not surrender his tenancy to the said Flat, and in case of his demise the tenancy will devolve on his

legal heirs including Ayaz, is accepted and shall remain in force till the above Writ Petition is heard.

v. If pending the hearing of the above Writ Petition, Ayaz agrees to stay elsewhere during the lifetime of the Petitioner, the Petitioner shall as per his

undertaking pay an amount of Rs 25 lakhs to Ayaz to enable him to arrange his stay elsewhere, after deducting the amount already paid as per Clause

(iii) above. It is clarified that upon payment of the lump-sum amount of Rs 25 lakhs to Ayaz by the Petitioner, the amount of Rs 50,000/- per month,

detailed in Clause (iii) above, shall cease to be paid.

v. The Writ Petition is placed for hearing and final disposal on 30th August, 2021.