

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION (ST) NO.1263 OF 2015

M/s. Patel Associates ... Applicant /  
Ori. Respondent.

Vs.

Shri Nayan Pandurang Pathare & Anr. ... Respondents

ALONGWITH

CIVIL APPLICATION (ST) NO.1043 OF 2015

IN

APPEAL FROM ORDER (ST) NO.18345 OF 2015

Shri Nayan Pandurang Pathare & Anr. ... Applicant /  
Ori. Defendant No.1.

Vs.

M/s. Patel Associates ... Respondents /  
Ori. Plaintiff.

Tushar Gujjar, Adv. i/b. Solicis Lex for applicant in CAA No.1263 of 15.

Pankaj Dixit, Adv. for respondent No.1.

Arun Sharma, Adv. i/b. Jayashree Manjrekar, Adv. for respondent No.2.

Ms. Uttara Pathare, Respondent No.1 present in Court.

**CORAM : MRS. ROSHAN DALVI, J.**

**DATE : 10<sup>th</sup> September, 2015.**

**P.C. :**

1. Rule. Made returnable forthwith.
2. The appellant has challenged the ad interim order of the Bombay City Civil Court dated 9<sup>th</sup> May, 2015. The respondent has taken out the Civil Application for further directions in the appeal. Both require to be disposed of together.
3. The suit is in respect of redevelopment of the suit building

filed by the developer. The appellant is defendant No.1 in the suit. The appellant appeared in person at the time of the ad interim order. The appellant was also represented by an advocate. The appellant states that she has not filed any vakalatnama in favour of that advocate. No vakalatnama would be filed at the time of an ad interim application. The appellant is represented by another advocate in her appeal. The appellant is present and has argued also.

4. The impugned order has granted correct direction with regard to the development of the suit building. There are 17 tenements which are flats as well as shops. The appellant is the occupant of shop No.1. She has a structure attached to the building. All the flat occupants as also shop occupants have entered into an agreement with the developer for being given amount in lieu of temporary alternate accommodation and for providing permanent alternate accommodation.

5. The appellant is not a member of the society. The appellant herself filed a suit being Suit No.1730 of 2014 in the Bombay City Civil Court, Dindoshi which was for the declaration that she should not be vacated from the suit premises unless and until the agreement of permanent alternate accommodation of a commercial premises in lieu of her shop is executed and she is admitted as a member of the society.

6. Therefore, it was seen that the appellant was amenable to being a member and being granted permanent alternate accommodation. This would be only be consequent upon her vacating the suit premises and her being given compensation in lieu of transit

accommodation.

7. Despite her own suit the appellant, it is stated, did not co-operate with the developer for redevelopment of the society building. Hence the developer sued and applied for an ad interim injunction in which the impugned order has been passed. The learned Judge has recorded that the appellant (defendant No.1) in the suit made a statement that if she was made a member of the society she was ready to handover possession of the suit property to the plaintiffs in the suit. This was in consonance with her own previous suit. She would obtain a decree in that suit. Both litigations would be settled.

8. The society made a statement that they were ready and en-role appellant (defendant No.1) as member of the society (which is despite arrears of maintenance charges of Rs.6.5 lacs approx.)

9. The learned Judge has thereafter rightly and correctly passed directions for the redevelopment. He has appointed Court Receiver in respect of the suit premises. He has directed the plaintiffs to make all payments and to give all benefits to the appellant herein (defendant No.1 in the suit) under the development as per development agreement dated 30<sup>th</sup> December, 2011. He has directed the appellant to make an application for membership and to the society to accept it and complete the necessary formalities. He has further directed that after these directions are complied, the appellant shall handover possession of the suit property (which is shop No.1) to the Court Receiver and the Court Receiver is directed to take over possession and hand it over to the plaintiffs.

10. The society has carried out the directions. The share certificate has been handed over to the appellant consequent upon the order. The appellant has accepted it and stated to Court that it has been handed over after the order is passed. The appellant, however, has not carried out the directions which she was directed to carry out. She has not handed over her premises to the Court Receiver.

11. She has instead filed this appeal. It was initially contended that she did not give instructions to her advocate and she did not make the statement which has been recorded by the Court. The order has been passed on 9<sup>th</sup> May, 2015. She has not applied to the Court for correcting the order if the learned Judge recorded anything incorrectly or falsely. The order has remained. In fact she filed this appeal instead. She must challenge the legality of the order only. The order is seen to be correct. It is consistent with her own plaint. The learned Judge has taken all possible efforts to make her a member of the society and then directed her to handover possession. The order is both legal as also equitable.

12. The appellant has sought to rely upon certain plans in the appeal. Those do not come up for consideration in view of her own statement. She complains about certain space near her structure and contends that the plans are incorrect and certain bank guarantee is not given. The appellant, who was not even a member of the society, has no authority to consider all these facts. The society has accepted the plan and resolved to redevelop the suit building. All the members, including the appellant are bound by the agreement entered into by the society. It must be remembered that the appellant is a defaulter to the extent of Rs.6.5 lakhs. She was, therefore, not made a member.

However the society has fairly condoned her non-payment and made her a member. It does not lie in her mouth to challenge the society's action. She has been given more than her fair share. She must discharge her reciprocal obligations.

13. Counsel on behalf of the developer has stated that the appellant shall be given compensation in lieu of the permanent alternate accommodation as is given to all the occupants. The list of all the occupants shows the exact carpet area of each of the occupants including the appellant. The appellant's carpet area is the least. The structure of the appellant is seen to be 130 Sq.ft. in the area. The adjoining shop No.2 is 160 Sq.ft. in area. The flats are 400 Sq.ft. in area. The adjoining occupant of shop No.2 is being given compensation of Rs.23,000/-. The appellant is offered compensation of Rs.20,000/-. The flat owners are given compensation of Rs.18,000/-. The compensation offered to the appellant is also fair, reasonable and equitable.

14. There is no reason why the appellant would hold up the entire redevelopment.

15. The order of the learned Judge is correct. The appeal has no substance. The appeal is dismissed.

16 In the Civil Application the respondent (appellant) has applied for the directions against the appellant to handover possession of the suit premises to the Court Receiver as directed in the impugned order and to provide police assistance to the Court Receiver to take forcible possession if the appellant does not handover possession

herself. That order has become opportune.

17. Hence the appellant is once again directed to handover her shop premises being shop No.1 to the Court Receiver within two weeks from today failing which the Court Receiver shall take forcible possession from the appellant, with police assistance, if required.

18. The Appeal from Order is dismissed. Civil Application No.1263 of 2015 has accordingly become infructuous and is disposed of accordingly. The application for stay is refused. Civil Application No.1043 of 2015 is granted in terms of the above order.

( ROSHAN DALVI, J. )

#### C E R T I F I C A T E

**Certified to be true and correct copy of the original signed order.**