

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 10448 OF 2014

Vijay Chotalal Kamdar and Ors.

..Petitioners

Vs.

Mekmood Ahmed Nazir Ahmed Khan and Anr.

..Respondents

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Mr. P.K. Dhakephalkar, Sr. Advocate a/w Vishal Kanade, U. Kazi and Sachin Mahagavkar, Advocates i/b Divya Shah Associates for Petitioners.
Mr. Arshad Shaikh, Advocate i/b Pawan Kumar R. Prasad, Advocate for Respondent No.1.

R.M. Haridas a/w M. Phiroza Khosravi, Advocate for Respondent No.2.

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CORAM : N.M. JAMDAR, J.

DATED : 24 MARCH 2015

P.C.:

Having heard the learned Counsel for parties, it appears not necessary to dwell deeper in the controversy and the impugned order as the controversy between the parties is now been considerably narrowed down and the solution to the present situation can be found by directing the learned Small Cause Court to decide the interim arrangement.

2. The Respondent No.1 filed a suit against the Respondent No.2 his brother, and the petitioner who is the developer. The property is situated at Cumbala Hill Division, August Kranti Maidan, Mumbai. It is being redeveloped by the petitioner. During redevelopment the

occupants are shifted in transit accommodation. Respondent No.2 is occupying the transit accommodation. It is the case of the Respondent No.1 that after the redevelopment it is the Respondent No.1 is entitled for permanent accommodation in the newly constructed building. The claim of Respondent No.1 is contested by the Respondent No.2, his brother. The adjudication as to the rival claim of Respondent Nos. 1 and 2 is pending adjudication in the suit.

3. The learned Counsel for petitioner submitted that permanent accommodation is now ready and the transit accommodation which the Respondent No.2 is currently occupying is in the set back area and unless that is vacated, the petitioner is not able to proceed with the remaining work as occupation certificate and other requisite permissions are held up. He submitted that the dispute between these two parties is causing substantial loss to the petitioner. The learned Counsel for petitioner submitted that the petitioner is ready to handover the permanent accommodation either to Respondent No.1 or Respondent No.2, or jointly.

4. In view of this submission, the question now remains is as to who i.e. Respondent No.1 or Respondent No.2 should occupy the permanent accommodation till the disposal of the suit. Both, the learned Counsel for Respondent Nos.1 and the Respondent No.2, sought to urge

various contentions as regard their right to occupy the permanent accommodation. However there is no adjudication by either the learned Small Cause Court Judge or the Appeal Bench as to what should be the interim arrangement qua the permanent accommodation.

5. To my mind, it would be appropriate if the learned Small Cause Court Judge decides as to what is the equitable interim arrangement as regard permanent accommodation by exploring various options such as sole occupancy of one party, joint occupancy, appointment of receiver and appointing one party as an agent, to give a few illustrations.

6. Accordingly without going into the merits of rival contentions, the petition is disposed of by directing the learned Small Cause Court Judge to decide the issue of interim arrangement qua the permanent accommodation. The petitioner has already earmarked the allotted permanent premises.

7. The parties shall appear before the learned Small Cause Court Judge on 6 April 2015. The learned Small Cause Court Judge will decide the question of interim arrangement within a period of four weeks thereafter. It is clarified that as regard this interim arrangement is concerned, I have not expressed any opinion on the merits of the rival contentions, including the various orders passed in the proceedings

between the parties earlier. The learned Small Cause Court Judge will no doubt consider all aspects of the matter.

8. However it also needs to be emphasized that the petitioner is not concerned with the interse dispute between Respondent Nos.1 and 2. The anxiety of the petitioner is only that the entire scheme of 450 tenants should not held up because of the interse dispute between these brothers. This anxiety is understandable. Therefore it is clarified that the continuance of Respondent No.2 in transit accommodation will be only for a period of four weeks within which the learned Small Cause Court Judge will decide the question of interim arrangement. It will thereafter be open to the petitioner to take steps in regard the transit accommodation as per the procedure established in law. In view of this position, it is obviously expected that the learned Small Cause Court Judge will decide the question of interim arrangement within a period of four weeks, from the date of appearance of the parties and that all parties will cooperate with the Small Cause Court Judge for disposal in the time bound period.

9. Writ Petition is disposed of in above terms.

[N.M. JAMDAR, J.]