

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****APPEAL FROM ORDER NO. 1167 OF 2015****IN****NOTICE OF MOTION NO. 3296 OF 2015****IN****B.C.C.C.S.C.SUIT NO. 8780 OF 1998****ALONGWITH****CIVIL APPLICATION NO. 1466 OF 2015****IN****APPEAL FROM ORDER NO. 1167 OF 2015****IN****NOTICE OF MOTION NO. 3296 OF 2015****IN****B.C.C.C.S.C.SUIT NO. 8780 OF 1998****ALONGWITH****CIVIL APPLICATION NO. 1467 OF 2015****IN****APPEAL FROM ORDER NO. 1167 OF 2015****IN****NOTICE OF MOTION NO. 3296 OF 2015****IN****B.C.C.C.S.C.SUIT NO. 8780 OF 1998****Niru alias Nina Chhabria****..... Appellant****VERSUS****Payal Gupta alias Shokey****D/o. Lakhpatri Aggarwal & Ors.****..... Respondents**

Mr.Rajiv Narula i/b. Jhangiani Narula & Associates for the Appellant.

Mr.D.D.Madon, Senior Advocate, a/w. Mr.Zal Andhyarujina, Mr.Punit Damodar, Ms.Nikita Vardhan, i/b. Kanga & Co. for the Respondent No.3.

CORAM : R.D. DHANUKA, J.**DATED : 30th NOVEMBER, 2015**

P.C.

By this appeal from order, the appellant (original plaintiff no.1) has impugned the order dated 14th October, 2015 passed by the learned trial judge dismissing the Notice of Motion No.3296 of 2015. The notice of motion was filed by the respondent no.3 herein (not a party to the suit) inter alia praying for the appointment of the Court Receiver in respect of the suit flat for the purpose of demolition/redevelopment by HBS View Private Limited in pursuance of a registered agreement for development dated 6th May, 2012. The applicants in the notice of motion applied for the said relief in view of the fact that the Court Receiver, High Court, Bombay was appointed in respect of the suit flat and the appellant was appointed as an agent of the Court Receiver.

2. Pursuant to an undertaking rendered by the appellant before this court on 28th October, 2015 and subsequent orders passed by this court, the appellant has already handed over possession of the suit property to the Court Receiver and the Court Receiver has already handed over possession of the articles lying therein to the appellant. This part of the order passed by the learned trial judge is thus implemented and cannot be interfered with by this court at this stage.

3. In view of some dispute between the appellant and the original defendant in respect of the suit flat, the learned trial judge has directed the developer to deposit certain amount before the trial court. The learned trial judge has also made it clear that the developer shall not hand over possession to any of the parties to the suit in view of the dispute. It is however made clear that if the suit is not disposed of and the flat is ready for occupation during the pendency of the suit, the Court Receiver shall handover possession thereof to the appellant as an agent of the Court Receiver.

4. Mr.Madon, learned senior counsel appearing for the society invited my attention to some of the documents annexed to the paper-book and also the subsequent proceedings filed by the appellant before this court inter alia challenging the resolution passed by the society and also the order passed by this court permitting the appellant to withdraw the said suit unconditionally.

5. The remaining issues in the suit and in respect of the amount of rent which is being deposited by the developer can be decided by the learned trial judge. In my view it would be appropriate if the appellant is granted liberty to apply before the learned trial judge for withdrawal of the said amount. If any such application for withdrawal is filed, the learned trial judge shall decide the same on its own merits.

6. The society is directed to ensure that the order passed by the learned trial judge insofar as deposit of the amount by the developer is concerned is complied with.

7. Mr.Narula learned counsel for the appellant states that the appellant is not aware of the sanction plan if any, applied by the developer jointly with the society to the Municipal Corporation for redevelopment of the building of the society including the suit flat.

8. Mr.Madon, learned senior counsel for the society on instruction states that all the members including the erstwhile member in respect of the suit flat would be allotted alternate premises in the proposed building by the developer on the basis of drawing a lot by the society after building is constructed, after the plans are sanctioned. Statement is accepted. It is made clear that once allotment of the respective flats are made by the society, the details of the allotment in lieu of the

suit flat shall be furnished to the Court Receiver by the society within two weeks from the date of such allotment. The appellant would be free to obtain copy of such list from the office of the Court Receiver.

9. In view of the fact that the society has agreed to allot the alternate premises in the new building in lieu of the suit property and in view of the fact that there is a dispute between the appellant and the respondent nos. 1 and 2 herein, it would be appropriate that till the issue in respect of the suit flat is decided by the trial court, the society and/or the developer shall enter into a writing with the Court Receiver in respect of the said premises in respect of the suit flat for the time being.

10. It is made clear that after such writing is executed by the society and/or the developer with the Court Receiver in respect of the property in question, the appellant as well as the respondent nos. 1 and 2 would be at liberty to seek photocopy of such writing from the Office of the Court Receiver.

11. It is made clear that after rights and entitlement of the appellant and the respondent nos. 1 and 2 are decided in respect of the suit flat, appropriate writing in respect of the suit flat shall be executed in favour of the successful party by the society and/or the developer if so required.

12. Mr.Madon, learned senior counsel for the society on instruction states that the photocopy of the floor plan duly sanctioned by the Municipal Corporation in respect of the suit flat would be furnished to the Court Receiver at the time of executing agreement for permanent alternate accommodation with the Court Receiver. Upon furnishing a copy of such floor plan, the appellant as well as the respondent nos. 1 and 2 would be at liberty to seek photocopy of such floor plan from the Court Receiver.

13. Appeal from order is disposed of in the aforesaid terms. No order as to costs. In view of the disposal of the appeal from order, civil applications do not survive and are accordingly disposed of.

[R.D. DHANUKA, J.]