

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 1499 OF 2012
IN
FIRST APPEAL NO. 491 OF 2012

ALONGWITH
CIVIL APPLICATION NO. 517 OF 2016
IN
FIRST APPEAL NO. 491 OF 2012

Smt. Sanjivani Deepak Pawar

.....Applicant

V/s.

1. M/s. Sanghvi Realty Pvt. Ltd
and Ors.

.....Respondents

* * * * *

Mr. Rajeev Chavan, Senior Advocate i/by. Mr. Veera Shinde,
Advocate for the applicant.

Mr. Chetan Kapadia i/by. Kishore Thakordas & Co., Advocate for
respondent no.1.

Coram :- Smt. R.P. SondurBaldota, J.

22nd April, 2016.

P.C. :-

1). This is a common order on the above two Civil Applications
taken out by the appellant in First Appeal No. 491 of 2012. The first

Civil Application taken out in the year 2012 seeks by way of a temporary relief direction to the respondent to earmark Shop no.6 on the ground floor and residential flat being flat no.501 in the new building for the appellant. The second Civil Application taken out in the year 2016 seeks a direction to the respondent to allot residential premises admeasuring 300 sq.ft on the ground floor of the new building and a direction for entering into registered agreement for permanent alternate accommodation in respect of that premises. The other reliefs sought in the second Civil Application relate to payment of outstanding rent for alternate temporary accommodation since August, 2015 till possession of the new premises is handed over to her.

2). The dispute raised by the appellant is that, she was in occupation of residential, as well as, commercial premises on the ground floor of the old building and as such is entitled to permanent alternate accommodation for both types of premises on redevelopment of the property. The Maharashtra Housing and Area Development Authority, however, certified the appellant's application only in respect of the residential premises. Therefore, her claim was considered only for the residential premises. The certification by MHADA was challenged by the appellant by filing a suit being S.C. Suit No. 899 of 2009 in the Bombay City Civil Court. That suit has been partly allowed accepting the claim of the appellant in respect of the residential premises and rejecting her claim in respect of the commercial premises. The City Civil Court,

further directed respondent no.1 to allot premises admeasuring 300 sq.ft on the ground floor in the newly constructed building. This direction has been challenged by respondent no.1 by preferring the companion appeal.

3). It is the contention of respondent no.1 that there are no residential premises on the ground floor of the newly constructed building and that respondent no.1 had earmarked residential premises being flat no.501 on the 5th floor of the newly constructed building. In its affidavit-in-reply, respondent no.1 further states that the appellant may occupy the premises earmarked for her after completing all the necessary formalities with MHADA.

4). The first Civil Application is in respect of the commercial, as well as, residential premises. The appellant has sought directions specifically in respect of shop no.6 in the new building on the ground floor. In the affidavit-in-reply to the Civil Application, respondent no.1 states that there is no shop on the ground floor available for allotment to the appellant since all the shops have already been allotted to different persons as per the certificate of MHADA. Since the allotment of Flat no.501 on the fifth floor in the new building has already been reserved for the appellant, no directions on this part of the prayer need be granted. It is open for the appellant to approach the respondents for the purpose of completing the formalities for allotment and occupation of the premises. The First Civil Application is therefore disposed

off accordingly.

5). As regards the second Civil Application, which makes a claim for allotment of the residential premises on the ground floor, the same cannot be maintainable in view of acceptance of allotment of the residential premises on the 5th floor of the newly constructed building in the first Civil Application. As regards the second prayer in the second Civil Application, there is no dispute that the appellant has received rent until the month of July, 2015. Mr. Kapadia, the learned Advocate appearing for respondent no.1 submits that, thereafter it has not been paid to the appellant because the permanent alternate accommodation to be allotted to her was ready for her occupation. This fact is not disputed by the appellant. In that circumstance, the appellant would not be entitled to the second relief also. Therefore, the second Civil Application is liable to be and is dismissed.

(SMT. R.P. SONDURBALDOTA, J)