

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

**APPEAL FROM ORDER NO.182 OF 2016
along with
CIVIL APPLICATION NO.261 OF 2016
in
APPEAL FROM ORDER NO.182 OF 2016**

Neha Nandkumar Gavkar .. Appellant/Applicant

Vs.

The Estate Officer, MHADA & Ors. .. Respondents

Mr. Rakesh Kumar a/w Mr.Vijendra Jabra a/w Ms.Janaki Mishra a/w
Ms.Dipti Pednekar a/w Ms.Suman Sharma for the appellant/applicant.
Mr.S.P.Thorat for the respondent no.1-MHADA.
Mr.S.S.Redekar for the respondent no.2.

CORAM : R.D. DHANUKA, J.

DATE : 29th February 2016

P.C.

. By this appeal from order, the appellant has impugned the order dated 6th February 2016 passed by the learned trial Judge refusing to grant ad-interim relief in the notice of motion filed by the appellant (original plaintiff) inter alia praying for an injunction restraining the defendants from dispossessing the appellant from the suit premises without following due process of law.

2. It is the case of the appellant that the mother of the defendant no.2 has created an interest in respect of the suit premises in favour of the appellant. The appellant has paid consideration in respect of the suit premises to the mother of the defendant no.2 and has been placed in possession in the year 2011 and continues to be in possession of the suit premises.

3. It is the case of the appellant that the defendant no.2 and his mother in collusion with MHADA have got a notice issued through MHADA calling upon the appellant to hand over vacant and peaceful possession of the suit premises which notice did not amount to following due process of law.

4. Learned counsel appearing for the appellant submits that the MHADA has been impleaded as a party-defendant to the suit. Learned counsel for the respondent no.2 does not dispute that the appellant is in possession of the suit premises. Learned counsel for the respondent no.2 submits that no leave and license agreement is created in favour the appellant by the mother of the defendant no.2 or by the defendant no.2.

5. Mr.Thorat, learned counsel appearing for the respondent no.1 submits that since the MHADA is admittedly the owner of the suit property, the City Civil Court has rightly refused to grant ad-interim relief in favour of the appellant/plaintiff and this Court also cannot grant any relief against MHADA being owner of the suit property.

6. A perusal of Section 66 of the Maharashtra Housing and Area Development Act, 1976 clearly indicates that if according to the MHADA, the person authorised to occupy any Authority premises has sub-let such premises without the previous permission of the Authority and if any person is in unauthorised occupation of any such premises, the Competent Authority has to follow the prescribed procedure under the said provision for eviction of such occupant. The said provision also

provides for an opportunity of being heard. Admittedly, no such hearing has been rendered by the Competent Authority under Section 66 of the MHADA Act to the respondent no.2 or to the appellant. In my view, the learned trial Judge thus could not have refused to grant ad-interim relief in favour of the appellant/plaintiff.

7. I therefore pass the following order :-

- (i) The impugned order dated 6th February 2016 passed by the learned trial Judge is set aside;
- (ii) Hearing of the notice is expedited. The defendants in notice of motion shall file affidavit-in-reply within four weeks from today and a copy thereof shall be served upon the plaintiff's advocate simultaneously. Rejoinder, if any, shall be filed within two weeks from the date of service of the affidavit-in-reply;
- (iii) There shall be ad-interim relief in terms of prayer clause (a) of the notice of motion during the pendency of the notice of motion;
- (iv) Learned trial Judge shall make an endeavour to dispose of the notice of motion within three months from the date of completion of the pleadings by both the parties;
- (v) It is made clear that the learned trial Judge shall not be influenced by the observations made by the learned trial Judge in the impugned order and also the observations made by this Court and shall decide the matter on merits and in accordance with law;
- (vi) It is made clear that ad-interim order passed by this Court shall continue till disposal of the notice of motion and for a period of two weeks thereafter;
- (vii) If the appellant proposes to apply for amendment of the plaint and if any such application is made before the learned trial Judge, the

same shall be disposed of by the learned trial Judge on its own merits before disposal of the notice of motion. It is made clear that the time granted by this Court for disposal of the notice of motion shall not be extended on the ground that any chamber summons is filed by the appellant.

8. Appeal from order is disposed of in aforesaid terms. In view of disposal of the appeal from order, civil application does not survive and the same is accordingly disposed of. No order as to costs.

R.D. DHANUKA, J.