FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.217/2016
IN
CIVIL REVISION APPLICATION NO.140/2010

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders

Mr. A. R. Shaikh for the Applicant
Mr. Rupesh Lanjekar for the Respondent Nos.1 to 4.

CORAM : K. K. TATED, J.
DATE : JULY 26, 2016

P.C.:

1. Heard. This application is made by the plaintiff for an order of injunction restraining the respondent defendant from creating any third party right, title and interest in respect of flat No.507 on 5th floor in the building known as AR-RAYYAN bearing at C.S. No.1856 & 1857 of Byculla Division, situated at 88-88-C & 90-92A, Maulana Azad Road/ Ripon Road, E Ward, Mumbai – 400 011.

2. In the present proceedings, the applicant plaintiff filed Short Cause Suit No.4813/2004 in the Bombay City Civil Court, Mumbai u/s. 6 of the Specific Relief Act for following reliefs;

"(a) that this Hon'ble Court be pleased to declare that the plaintiff being lawful tenant of the suit premises viz. Room No.9, 1st floor 88-C, Yusuf Baug, M.A. Road, Mumbai – 400 011 is entitled to the quiet peaceful and vacant possession of the same.

(b) that the defendants be ordered and directed to by a mandatory order of this Hon'ble Court to hand over quiet peaceful and vacant possession of the Room No.9, 1st floor 88-C, Yusuf Baug, M.A. Road, Mumbai – 400 011 to the plaintiff

(c) that pending the hearing and final disposal of the suit the Court Receiver High court Bombay or some other fit and proper person be appointed as Receiver of the said premises situated in the premises being Room No.9, 1st floor 88-C, Yusuf Baug, M.A. Road, Mumbai – 400 011 with all powers under Order 40 Rule 2 of the C.P.C.1908 including the power to permit the plaintiff to use and occupy the said Room No.9, 1st floor 88-C, Yusuf Baug, M.A. Road, Mumbai – 400 011, as agent of the Court Receiver on such terms and conditions as this Hon'ble Court may deem fit.

(d) that pending the hearing and final disposal of this suit, the defendants by themselves, their family members, agents and servants be restrained by an order and injunction of this Hon'ble Court from transferring and/or selling, and/or assigning and/or alienating and/or disposing of the premises bearing Room No.9, 1st floor 88-C, Yusuf Baug, M.A. Road, Mumbai – 400 011, and/or inducting any third party therein

and/or dealing with the same.

(e) This Hon'ble Court be pleased to grant ad-interim and interim relief in terms of prayer clauses (c) & (d) hereinabove.

(f) .....

(g) .....”

That suit was dismissed by the Trial Court by judgment and decree dated 17.12.2009. Hence, the applicant plaintiff made Civil Revision Application whichw as admitted.

3. On the date of admission, alternate accommodation in redeveloped building was not ready. Hence, this court, directed the respondent defendant to inform the applicant plaintiff in writing as and when flat in redeveloped building is ready for allotment. Pursuant to the said directions, the respondent's advocate by his letter dated 06.04.2016 informed the applicant's advocate that they received allotment letter dated 31.03.2016 in respect of the said flat No.507. Hence, the applicant plaintiff made the Civil Revision Application.

4. The learned counsel for the applicant submits that initially they filed a suit u/s. 6 of the Specific Relief Act for possession which was

dismissed. He submits that the Civil Revision Application is admitted by this court after hearing the parties. He submits that during the pendency of the Civil Revision Application, the developer issued allotment letter in favour of the respondent defendant on 31.03.2016. He submits that initially, the applicant made Civil Application No.757/2012, 558/2013 and 431/2015 for the same relief. He submits that all the Civil Applications were dismissed by this court only on the ground that as and when the respondent defendant gets allotment of a flat in newly reconstructed building, the applicant can move this court for the same relief.

5. The learned counsel for the applicant submits that during pendency of the Civil Revision Application if the respondent defendant creates third party right, title and interest in respect of the said flat No.507, nothing will survive. He submits that pending the hearing and final disposal of the Civil Revision Application, this Hon'ble Court be pleased to restrain the respondent from creating any third party right, title and interest in respect of the said flat No.507. He submits that if injunction is not granted, irreparable loss will be caused to the applicant.

6. On the other hand, the learned counsel for the respondent vehemently opposed the Civil Application. The respondent filed Affidavit-in-Reply dated 12.07.2016. Along with reply, they placed on record a copy of oral judgment dated 17.03.2009 passed by the Small Causes Court at Mumbai in R.A.D. Suit No.1022/2004 and also a copy of consent terms between the respondent and the developer in R.D.Suit No.1022/2004. He submits that the respondent filed RAD Suit No.1022/2004 for declaration that they are lawful tenant of the suit premises (old) i.e. Room No.9, 1st floor 88-C, Yusuf Baug, M.A. Road, Mumbai – 400 011 and for an order of injunction. That suit was dismissed against respondent defendant Nos.1 and 2 i.e. owner and members of the building known as Yusuf Baug. He submits that the developer settled the matter with respondent defendant and admitted them as tenant of the old premises. He submits that in view of subsequent development in RAD Suit No.1022/2004, the applicant is not entitled to any relief in the Civil Revision Application. He submits that the developer has allotted flat No.507 to the respondent defendant as owner. Hence, there is no question of restraining the owner from creating any third party right, title and interest in respect of

the suit property till hearing and final disposal of the Civil Revision Application. Hence there is no substance in the Civil Revision Application. Same be dismissed with costs.

7. Heard the learned counsel for the parties at length. It is to be noted that the Civil Revision Application is pending for final disposal on merits. During pendency of the Civil Revision Application, the suit property was taken by the developer for redevelopment project. In redevelopment project the developer allotted flat No.507 in favour of respondent defendant. If during pendency of the Civil Revision Application, the respondent defendant creates third party right in the said flat No.507, then it would be difficult for the applicant plaintiff to execute the order.

8. Considering these facts, I am of the opinion that the applicant has made out a case for injunction restraining the respondent from creating any third party right, title and interest till the hearing of Civil Revision Application in respect of the suit property i.e. flat No.507 on 5th floor in the building known as AR-RAYYAN bearing at C.S. No.1856 & 1857 of Byculla Division, situated at 88-88-C & 90-92A, Maulana Azad Road/ Ripon Road, E Ward, Mumbai – 400 011.

9. Hence, following order is passed:

a. Pending the hearing and final disposal of the Civil Revision Application, the respondent defendants are restrained by an order of injunction from creating any third party right, title and interest in respect of the suit property i.e. No.507 on 5th floor in the building known as AR-RAYYAN bearing at C.S. No.1856 & 1857 of Byculla Division, situated at 88-88-C & 90-92A, Maulana Azad Road/ Ripon Road, E Ward, Mumbai – 400 011 and/or flat, if any, allotted by the developer in lieu of old premises.

b. Civil application stands disposed off accordingly.

JUDGE