

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

CIVIL APPLICATION NO. 1072 OF 2016
IN
WRIT PETITION NO. 4952 OF 2016

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

Mr. J.J. Thakkar for the Applicant.
Mr. Sachin P. Shetye for the Respondent.

CORAM : K.K. TATED, J.
DATE : 05 MAY, 2016.

P.C. :

1 Heard learned counsel Mr. Thakkar for the applicant and Mr. Shetye for the respondent.

2 This Civil Application is preferred by original defendant-tenants for staying of suit filed by respondent-original plaintiff in small Causes Court for vacant and peaceful possession of suit premises for carrying out reconstruction, as per Section 16 of the Maharashtra Rent Control Act 1999.

3 The applicant/defendant preferred application below Exhibit-12 under Order 7 Rule 11 of Civil Procedure Code for rejection of plaint. Said application was rejected by the trial Court with costs. The defendant also preferred application below

Exhibit-15 for dismissal of the suit on the ground of having made false statement by the plaintiff in the plaint and for suppression of material facts and misrepresentation of material facts. That application was also dismissed by the trial Court. Hence, the defendant present Writ Petitions. The Writ Petitions were admitted by this Court by order dated 04.04.2016. In Writ Petition the defendant also made prayer for stay of the further proceedings of the suit filed by the plaintiff. Same was not granted at the time of admission. Thereafter the defendant preferred this Civil Application for stay of the R.A.E. Suit No.1998 of 2014 filed by the plaintiff in the Small Causes Court at Bombay and for other reliefs.

4 The Writ Petition No.2539 of 2016 was duly affirmed before the notary on 12.02.2016 as well as the Civil Application. Civil Application was not filed with Writ Petition. After admission of the Writ Petition, the petitioner filed Civil Application in this Court on 15.04.2016.

4 The learned counsel Mr. Thakkar for applicant submits that as the Writ Petition already admitted by this Court, pending the hearing and final disposal of the same, this Court be pleased to stay the further proceedings in Suit filed by the plaintiff before the

Small causes Court. He submits that the application preferred by the plaintiff for rejection of plaint under Order 7 Rule 11 as well as application for dismissal of the suit stand rejected. He submits that if the further proceedings in suits filed by the plaintiff is not stayed, irreparable loss will cause to the defendant. He submits that apart from that the plaintiff failed and neglected to make out the case as required under Section 16 of the Maharashtra Rent Control Act 1999 in plaint. He submits that all these issues required to be decided at the final hearing of Writ Petition. Hence, the defendant preferred Civil Applications for stay of the further proceeding of suit filed by the plaintiff.

5 On the other hand, the learned counsel Mr. Shetye appearing on behalf of respondent-plaintiff, vehemently opposed the present Civil Application. He submits that in Writ Petition, the defendant made specific prayer for stay of the further proceedings in suit filed by the plaintiff before the Small Causes Court. He submits that at the time of admission of Petition, this Court has not granted any relief in favour of the defendant except admitting Writ Petition. Hence, now the defendant is not entitle to claim same relief in the present Civil Application.

6 The learned counsel for the plaintiff submits

that there are in all 45 tenants in a building known as Yashoda Niwas, Rajawadi, 'D' Colony Road, Vidyavihar (E), Mumbai - 400 077. He submits that except petitioner and other two tenants are not co-operating in redevelopment project. He submits that the building Yashoda Niwas (hereinafter referred as 'said building') is in dilapidated condition. He submits that Kantilal Lalpuria, Consulting Structural Engineer, from "Total solution" carried out structural audit of a said building and prepared the report dated 09.06.2014. He submits that in the said report a Structural Engineer specifically stated that the said building is in dilapidate condition and it required redevelopment. He relied on the following portion of the said report :-

"We advice

The defects stated in our attached report, if remain unattended, may cause damage to structural concrete in the long run. As of now, there is deficiency in structural concrete and distress on structural members.

Conclusion

- *Looking to the condition of the building and visible major cracks and poor maintenance of the building needs major repairs but, at this stage, structural repairing will not add substantial strength to the structural in its balance serviceable life.*
- *The repairing will not stop further*

deterioration process entirely

- *The balance serviceable life is unpredictable event after carrying out major structural repairs.*

We advice

The repairing and further maintenance cost may prove disproportional with respect to balance service life. Thus we believe going into redevelopment of property is the best choice as repairs will be a very costly affair and a periodic one. Looking to the condition of structure and foundations of the building in our opinion the building should enter in to redevelopment of the building.

We further advice that all future repairs & renovation work shall be carried out under guidance of a structural engineer.

Please feel free to contact us in case of further guidance on the matter above. ”

7 The learned counsel for the respondent/plaintiff submits that more than 70% tenants agreed for redevelopment and executed agreements. He submits that the defendant though attended the meeting with all other tenants, refused to execute the agreement for redevelopment without disclosing any reason. In support of this contention plaintiff refers paragraphs 6, 7, 9 and 10 of the plaint which reads thus :-

“6. The plaintiff states that the suit premises is reasonably and bonafidely required by the Plaintiff and his other four brothers namely Mr. Ankush Janardan Walawalkar, Mr. Lahu Janardan Walawalkar,

Mr. Sugandh Janardan Walawalkar, Mr. Santosh Janardan Walawalkar who are the co-owner in the suit property. The Plaintiff filed an above suit as one of the co-owner and landloard of the suit premises as he recovered the monthly rent from the Defendant. The other brothers have executed a Power of Attorney in favour of the Plaintiff. The elder brother Mr. Ankush's family consists of six members i.e. he, his wife, one daughter, one son, daughter-in-law and one grandddaughter. The second son Mr. Lahu's family consists of four members his wife, one daughter and one son. All of them are residing at Lalbaug in the area admeasuring 340 sq. ft. consisting of three single rooms. One is used for common kitchen, one is for living and third one is use for common bedroom for all three couples. Its need not be explained how they are accommodating themselves in common bedroom it is grave inconvenience which affects their privacy and personal life. The plaintiff further states that though they own the suit property they are living in such a condition. Now the second brother Mr. Lahu proposed to do the marriage of his son Mr. Yashodhan. However due to lack of sufficient space he could not get marriage. His marriage prospect may totally vanish after few years. Now he is running at age of 28 years, because of this condition of the family. There are frequent quarrel between the members of the family and that disturbs and strains relations or it adversely affects the routine life of the family members. Therefore the plaintiff requires the residential accommodation urgently for personal use. Further as far as the requirement of the other two brothers is concern also bonafide. The Plaintiff himself

with his family and his younger brother Mr. Santosh's family consists of nine members. Wherein the Plaintiff's have three children two daughter and one son and Mr. Santosh have two daughters. They all are occupying the area admeasuring 1000 sq. ft. Taking into consideration the need for privacy of two couples, study room, kitchen, leaving room the above space is too short and inconvenient. The third brother Mr. Sugandh's family still residing at Andheri in the area admeasuring 500 sq. ft his family consists of four members. Therefore all the members of the Plaintiff's family because of lack of accommodation they cannot live their life peacefully and comfortably. Therefore the Plaintiff and his brothers require the suit premises for bonafide use and occupation. Whereas the Defendant is business man, he is having grocery shop in the same vicinity thus they are sound in financial condition. They could purchase any other premises anywhere in Mumbai suburbs. Therefore, the Defendant shall not suffer any hardship, loss, damages if the suit is decreed and directed the Defendant to quit, vacate and handover the peaceful possession of the suit premises to the Plaintiff. On the other hand, the Plaintiff shall suffer grave prejudice and irreparable loss if the suit is not decreed in his favour.

7 The Plaintiff states that the suit premises is required by the Plaintiff u/s 16(1) (i) of Maharashtra Rent Control Act 1999 for immediate purpose of demolishing them and such demolition is required to be done for the purpose of erecting a new building. The Defendant is well aware that the suit building is quiet old building and the condition of the suit building is not very safe and it is beyond

repairable condition thus it require reconstruction. The Plaintiff therefore put the proposal to the Defendant and other tenants of the suit building in the meeting held on 20/08/2012. All the tenants including the Defendant attended the meeting and gave positive response for reconstruction of the old building known as Yashoda Niwas. Accordingly on the second meeting held on 13/01/2013 the Plaintiff placed before the tenant the reconstruction proposal upon which lengthy discussion took place, on the issue regarding the area of the new premises to be allotted in lieu of the old premises to each tenant, and the tenant were agreed upon. The amount of compensation for temporary accommodation was also agreed and all other usual terms were agreed by the Defendant and other tenant. Accordingly the draft agreement was prepared and placed before the meeting held on 03/05/2013. All the tenants fairly admit the terms and conditions of the draft Agreement.

9 The Plaintiff states that because of the Defendant adamant approach and behaviour all other tenants are suffering much secondly the building is in bad condition at any moment accident may take place and any one can cause injuries from this accident. If at all, such accident or any mishap takes place the Defendant will have to be held responsible for the same. The Defendant also very well knows the condition of the suit building but he is interesting in extracting unaccountable amount from the landlord or builder the Plaintiff called out structural audit report of the said old building. The copy of the said report furnish to all the tenants, to understand the candidate of the building. But

inspite the knowledge of the bad construction of the suit property they did not co-operate to develop the said building. Therefore it is necessary to pass a decree for eviction against the Defendant. The copy of the draft Agreement supplied to the Defendant and in receipt thereof his acknowledge record. The copy of the draft agreement and acknowledgement of the Defendant and copy of the structural audit report is annexed herewith as Exhibit C Colly. The Plaintiff rely upon signed agreement for permanent alternate accommodation of other tenants when produced.

10 The Plaintiff states that he has invested over Lac of rupees for appointment of Architect, Solicitor for drawing plan, statement and prepare entire proposal to submit to the M. C. G. M. for development of old building. Further since there is no special scheme in suburb area for development of the old building, the landlord can use the outside F. S. I. by way of T.D.R. which the Plaintiff requires to purchase from the market. The Plaintiff has already given an advantage of the fangible F.S.I. to all the tenants in the newly constructed building. The Defendant is the person who intent to obstruct development without any proper and sufficient cause or reason. In the circumstances, the Defendant render himself liable for eviction from the suit premises. ”

6 The learned counsel for plaintiff submits that as on today the building is in dilapidated condition, the same may collapse at any time. He submits that when this Court admitted Writ Petition, the stay was

not granted in favour of the defendant. Hence, there is no substance in Civil Application and the same to be dismissed with cost.

7 I heard both the sides at length. In the present proceedings when Writ Petition was admitted by this Court, this Court has not granted any ad-interim or interim protection in favour of the defendant by staying the further proceedings of suit filed by the plaintiff against defendant. It is to be noted that the Civil Application No.1078 of 2016 was duly affirmed before the notary on 15.02.2016, the same was filed by the defendant in the registry of this Court on 15.04.2016 when Petition was admitted on 04.04.2016. At that time this Court has not granted any interim relief for staying the further proceedings of the suit filed by the plaintiff. Hence, there is no question of entertaining the present Civil Application for the same cause of action. Apart from that considering the facts disclosed by the plaintiff in plaint as reproduced herein above, the structural report dated 09.06.2014 and more than 70% tenants already executed the agreement of permanent accommodation with the plaintiff, I am of the opinion that the defendant has not made out any case for entertaining Civil Application and the same is required to be dismissed.

8 Considering the facts and circumstances of the present case, I am of the opinion that hearing of the suits filed by the plaintiff is required to be expedited. Hence, following order :

- a) Civil Application stands rejected with cost.
- b) Hearing of RA.E. suit No.1998 of 2014 is expedited.

(K.K. TATED, J.)