

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

**APPEAL FROM ORDER STAMP NO.14503 OF 2016
WITH
CIVIL APPLICATION STAMP NO.14504 OF 2016**

Mahendra Bhimrao Kharat and ors. : Appellants/Applicants.

Versus

**Maharashtra Housing and Area Development
Authority and ors. : Respondents.**

**Mr. Nitesh Acharya i/by Mr. Shivraj Kunchge for the
Appellants/Applicants.**

Mr. P G Lad for the Respondent Nos. 1 and 2.

Mrs.Madhuri More for the Respondent Nos.3 and 5.

**Mr. Chirag Balsara a/w Mr. Abhay Parab and Mr. Abbas Zaidy i/by Zohair
& Co. for the Respondent No.4.**

CORAM : R. M. SAVANT, J.

DATE : 22nd June 2016

P.C.

1 The order dated 2nd May 2016 passed by the learned 2nd Additional Principal Judge, City Civil Court, Mumbai is taken exception to by way of the above Appeal from Order. By the said order the application for ad-interim relief filed by the Appellants/original Plaintiffs came to be rejected.

2 The instant Appeal from Order is the second round of litigation between the parties, when in the first round the Appellants/Plaintiffs carried the matter right up to the Apex Court, and the Apex Court by the order dated 16/02/2016 had disposed of the Civil Appeal.

3 The instant Notice of Motion being No.1801 of 2016 wherein the application for ad-interim relief was filed by the Appellants/Plaintiffs has been filed inter-alia for directing the Defendant No.4 i.e. the Developers and the Officers of the Mumbai Building Repairs and Reconstruction Board (“MBRRB” for short) to ensure the registered individual agreement execution between the Plaintiffs and the Developer for providing 450 sq.ft. carpet area by way of alternate permanent alternate accommodation in the redevelopment scheme under Regulation No.33(7) of D.C. Regulations on the suit property prior to asking the Plaintiffs to vacate their respective suit premises for the said redevelopment scheme.

4 The redevelopment scheme undertaken under Regulation No.33(7) of D.C. Regulations is in respect of the property i.e. the building situate on the land bearing C.S. No.110, Mazgaon Division, 35-35C, 35, 35-A, 35-B, Nesbit Road, Mazgaon, Mumbai – 400 010. No objection certificate for the said scheme has been issued by the MBRRB on 14/09/2011 in favour of the Respondent No.4 who is the owner as well as the developer of the property in question.

5 It seems that prior to the instant suit which has been filed for mandatory injunction, the Appellants/Plaintiffs had filed S C Suit No.2913 of 2015 challenging the eviction order dated 03/11/2015 passed by the Chief

Officer of the MBRRB. It seems that in the said Suit an application for ad-interim relief came to be moved by way of Notice of Motion and the learned Judge of the City Civil Court rejected the said application for ad interim relief by the order dated 13/01/2016. Against the said rejection, the Appellants/Plaintiffs had filed Appeal from Order Stamp No.1189 of 2016 in this court. On 02/02/2016 a learned Single Judge of this court was pleased to dismiss the said Appeal from Order, resulting in the Plaintiffs filing a Special Leave Petition in the Apex Court. In the said SLP leave was granted and the Civil Appeal came to be disposed of on 16/02/2016.

6 In the context of the challenge in the instant Appeal from Order, it would be relevant to refer to paragraph 6 of the order dated 16/02/2016 passed by the Apex Court which reads thus :-

“On the area to be allotted, the learned counsel for the respondents submits that each of them will be allotted carpet area of not less than 450 sq.ft. The above submission is recorded.”

Pursuant to the said order dated 16/02/2016 passed by the Apex Court, the Respondent No.4 had addressed letters to the Appellants/Plaintiffs enclosing draft agreements which were, according to the Respondent No.4, inconsonance with the statement that has been recorded in the order of the Apex court. However, the Appellants/Plaintiffs have not come forward to execute the said agreements as a consequence of which the directions as contained in

paragraph 6 of the said order dated 16/02/2016 remained to be complied with. The Appellants/Plaintiffs thereafter filed the instant Suit being L C Suit No.1004 of 2016 which, as indicated above, is for mandatory orders against the Defendant No.4 which are mentioned in prayer clauses (A) to (F) of paragraph 16 of the plaint. As indicated above, it is in the instant suit that the Notice of Motion came to be filed claiming ad-interim relief in terms of prayer clause (a).

7 In the said Notice of Motion reply was filed on behalf of the Defendant No.4 – the owner/developer.

8 The Trial Court considered the said application for ad-interim relief and has rejected the same by the impugned order dated 02/05/2016. The Trial Court whilst rejecting the ad-interim relief has adverted to paragraph 6 of the order of the Apex Court wherein the Apex Court has recorded the statement made by the learned counsel for the Respondents that each of the Appellants herein i.e. the original Plaintiffs will be allotted carpet area of not less than 450 sq.ft. The Trial Court has thereafter adverted to the mandate of Regulation 33(7) of D.C. Regulations wherein the entitlement of the tenants/occupants is in the minimum 300 sq.ft. and even if the fungible FSI, which is a concept introduced in 2012, is taken into consideration, the tenants/occupants would be entitled to additional area of 35% which comes to

405 sq.ft. However in the instant case the developer has agreed to allot 450 sq.ft. carpet area as per the statement made by the learned counsel for the Respondent No.4 and therefore the Trial Court was of the view that the interest of the tenants/occupants is more than protected. The Trial Court as indicated above by the impugned order dated 02/05/2016 has accordingly rejected the application for ad-interim relief.

9 The learned counsel appearing on behalf of the Appellants/Plaintiffs Shri Nitesh Acharya would seek to make a grievance that there is no compliance of the directions as contained in paragraph 6 of the order of the Apex Court in the matter of execution of the agreements and their registration,. The learned counsel would also seek to make a grievance as regards the contents of the agreement. It was the submission of the learned counsel for the Appellants/Plaintiffs that the area to be provided to the tenants/occupants is not as per the statement made on behalf of the developers in the Apex Court. The learned counsel for the Appellants/Plaintiffs also sought to contend that the instant Appeal from Order may not be proceeded with on the ground that the issue regarding fungible FSI is pending before a Division Bench of this Court.

10 In my view, it is not possible to accept the contention urged on behalf of the Appellants/Plaintiffs. As indicated above, the Respondent No.4

Developer has called upon the tenants/occupants to execute the agreements in terms of paragraph 6 of the order of the Apex Court, but it is the tenants/occupants who are delaying the execution of the agreements on one pretext or the other. In so far as the grievance of the Appellants/Plaintiffs as regards the carpet area is concerned, the learned counsel appearing for the Respondent No.4 herein i.e. the original Defendant No.4 reconfirms the fact that the tenants/occupants would be allotted tenements of 450 sq.ft. area. It seems that the Appellants/Plaintiffs are interested in continuation of their occupation on one pretext or the other and that is how the third submission was urged by the learned counsel for the Appellants/Plaintiffs that the issue regarding fungible FSI is pending before a Division Bench of this Court, when the decision on the said issue would not impact the Plaintiffs's entitlement. As indicated above, the Trial Court by considering the mandate of Regulation 33(7) of D.C. Regulations which is to provide an area of 300 sq.ft. and assuming that fungible FSI to the extent of 35% is to be added, the area would come to 405 sq.ft. and considering the fact that in the instant case the area being allotted is 450 sq.ft. which is much more than 405 sq.ft. has refused to grant ad-interim relief to the Appellants/Plaintiffs on the said basis.

11 It is also required to be noted that out of 119 tenants/occupants, 55 tenants/occupants have already vacated the premises which were in their occupation and have been put up in the transit camp provided by the

Respondent No.1 for which the rent is being paid by the Respondent No.4.

12 In my view, grant of any relief to the Appellants/Plaintiffs would have the effect of jeopardizing the interest of the tenants/occupants who have already vacated their tenements as as also the implementation of the scheme under Regulation 33(7). In my view, therefore, no case for interference is made out. The above Appeal from Order is accordingly dismissed. In view of the dismissal of the above Appeal from Order, Civil Application Stamp No.14504 of 2016 does not survive and the same to accordingly stand disposed of as such.

13 At this stage, the learned counsel for the Appellants/Plaintiffs prays for continuation of the ad-interim relief. In the facts and circumstances of the present case, the said prayer is rejected.

[R.M.SAVANT, J]