

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.843 OF 2015

Mansukhlal Damji Gala & Anr.

.. Appellants

*-Versus-*

M/s. Prathamesh Landmark Consultancy  
and Ors.

.. Respondents

Mr.Dipen Furia i/b. Shah Furia Associates for appellants

Ms. Seema S. Singh for respondent No.1

Ms. Kavita Shah for respondent No.2.

CORAM : G.S.KULKARNI, J.

DATE : 4<sup>th</sup> May 2016.

P.C.

1] Heard learned Counsel for the parties. By this appeal, the appellant – plaintiff has challenged the order dated 2<sup>nd</sup> May 2015, passed by the learned Judge, City Civil Court, Dindoshi, Borivali Division, Mumbai whereby the Notice of Motion No.208 of 2014 in Suit No.3144 of 2013, as filed on behalf of the appellant for the following reliefs has been rejected:-

(a) That this Court may please to direct the defendant No.1 to pay monthly rent of Rs.40,000/- or provide temporary alternate accommodation in the same locality as per choice of the plaintiff according to the development agreement dated 8<sup>th</sup> June 2006 clause 8(i)

executed between the defendant No.2 in lieu of the Shop No.8 i.e. Suit premises which is taken over by the defendant No.1 for the redevelopment.”

(b) Pending the hearing and final disposal of the suit, this Court may please to appoint Court Commissioner or any government surveyor to measure the suit property of the plaintiff;

(c) Interim and ad-interim reliefs in terms of prayer clause (a) may be granted in favour of the plaintiff.”

2] While assailing the impugned order, the learned Counsel for the appellant submits that the entitlement of the appellant is to a permanent alternate accommodation of 233 sq. feet. carpet. Learned Counsel for the respondents have disputed this claim as made by the appellant would they submit that the area in occupation of the appellant is only 222 sq.feet. My attention has been drawn by the learned Counsel for the parties to the orders which are passed by this Court in a suit which was filed by the defendant No.1 (M/s.Prathamesh Landmarg Consultancy). This order is dated 30<sup>th</sup> November 2010 passed in Notice of Motion No.2770 of 2010 in Suit No.2550 of 2010. This order takes into consideration the amicable settlement which was arrived at between the plaintiff and defendants in that suit pertaining to shop premises which was admeasuring 30 sft. This order would not assist the appellants to support their claim, which is made in Notice of Motion in question.

4] The learned Judge in passing impugned order has also taken into consideration an order dated 13<sup>th</sup> October 2010 passed by this Court. It is observed that the appellants have not produced the plan of old building so that the exact area in possession of the appellant could be ascertained. As to whether the appellant would be entitled to the permanent alternate accommodation admeasuring 233 sft. would be a matter to be determined at the trial of the suit, as at this stage, it appears that, for the court to come to a prima facie conclusion as regards the claim of the appellant, there is no such material available. As regards the claim of the appellant, that he is entitled to an amount of Rs.40,000/- or a temporary alternate accommodation in the same locality also cannot be considered in view of the extreme stand which has been taken on the part of the appellant. The learned Counsel for the respondent has pointed out that similar occupants like the appellant are being paid Rs.15,000/- as rent. It is submitted that an amount of Rs.40,000/- as claimed by the appellant is exorbitant and without any basis. Learned Counsel for respondent No.1 fairly submits that the respondents are willing to pay a monthly rent of Rs.15,000/- to the appellant from the date the appellant had vacated his premises i.e. from 1<sup>st</sup> September 2013. The respondent will also pay arrears of rent from September 2013 within six weeks from today at the rate of Rupees.15,000/- per month. Statements accepted.

The learned Counsel for the appellant submits that the appellant is willing to accept this amount without prejudice to his rights and contentions in the present suit and in the suit which is pending filed by the defendant No.1 against the appellant.

5] In the light of the above observations, it is not necessary to examine the rival contentions as being urged. Admittedly, the premises stands vacated from 26<sup>th</sup> August 2013 and the development is in progress. Respective contentions and rights of the parties are at large in the pending suit. The A.O. is accordingly disposed of in the above terms. No costs.

6] In view of disposal of appeal from order, the civil application does not survive and is disposed off accordingly.

(G.S.KULKARNI, J)