

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.694 OF 2016
IN
APPEAL FROM ORDER NO.511 OF 2016**

**Popatlal Nagshi
Since Deceased through LRs
Rajendra Popatlal Visaria and ors. : Applicants.**

In the matter between

**M/s.Manisha Developers and anr. : Appellants.
Versus
Fatehlal Mangilal and ors. : Respondents.**

**Mr. Suresh Dubey for the Applicants/original Respondents
Mr. N V Walawalkar, Senior Advocate with Mr. Suresh M Sabrad for the
original Appellant Nos.1 and 2.
Mr. A V Diwate for the Respondent Nos. 19 and 20.**

**CORAM : R. M. SAVANT, J.
DATE : 14th June 2016**

P.C.

1 The above Civil Application has been filed seeking a direction against Manisha Developers who are the original Appellants in the above Appeals from Order that they should enter into agreement of permanent alternate accommodation with the Applicants before the Applicants are required to vacate their respective premises. The Applicants also pray that the Applicants be granted time to handover the possession of their respective tenanted premises to the landlord/developer i.e. the Manisha Developers and such time should be till 01/01/2017.

2 The foundation for the said reliefs is sought to be laid in the averments which are contained in the above Civil Application. It is required to be noted that the above Appeal from order No.511 of 2016 along with Appeal from Order No.510 of 2016 were disposed of in terms of the Consent Terms arrived at between the Applicants and the said Manisha Developers, who as indicated above, was the Appellant in both the Appeals from Order. The said Consent Terms are dated 28/04/2016 arrived at between the said Manisha Developers and the Respondent Nos.5, 6, 7, 10, 11, 13, 16, 18, 21 and 1, and the Consent Terms dated 05/05/2016 arrived at between the said Manisha Developers and the Respondent Nos.2A, 3, 4, 8, 12 and 17. The said Consent Terms are identical and the cause for the said two sets of Consent Terms was that some of the Respondents were not available at the time of signing of the first Consent Terms dated 28/04/2016 and hence the second Consent Terms. The Applicants herein were the said Respondents who have entered into the Consent Terms with the said Manisha Developers. The gist of the Consent Terms was that the Applicants would vacate their present premises and that the said Manisha Developers would provide them permanent alternate accommodation in terms of the area presently under their occupation.

3 In so far as the Respondent No.s9 and 10 are concerned, the direction as regards the said Respondents are contained in paragraph 4 of the order dated 05/05/2016 passed by this Court in both the Appeals from Order

wherein it has been provided that the Respondent No.9 Kishorbhai Arjanbhai would be entitled to a permanent alternate accommodation and that the Respondent No.10 Kishan Mangal Barot is the successor of Mr. Ashwin M Kapadia whose name has been shown at Sr.No.11 in the said list of the Municipal Corporation. In so far as the said Respondents are concerned, it was agreed that the parties will jointly measure the premises which are in occupation of the said Respondents, and the said Manisha Developers shall accordingly grant the permanent alternate accommodation in favour of the said Respondents of a corresponding area arrived at on the basis of the joint measurement.

4 In so far as the Respondent No.14 is concerned, since he had shown his reluctance to sign the Consent Terms it was provided in paragraph 6 of the said order dated 05/05/2016 that the Respondent No.14 Mr. Raju Dave would assert his rights in the pending suit.

5 At this stage, it would be relevant to refer to the cause of action for filing the suit. The cause of action was the notice issued by the Municipal Corporation for Greater Bombay (for short "MCGM") to the Applicants i.e. the Respondents in Appeals from Order under Section 354 of the Mumbai Municipal Corporation Act on the ground that the structure was in ruinous or in a dilapidated condition.

6 In so far as the above Civil Application is concerned, it is sought to be contended that the agreement which has been forwarded to the Applicants contains a onerous condition in respect of payment of the price of the permanent alternate accommodation. It is further sought to be contended that in so far as the Respondent Nos.9 and 10 are concerned, joint measurement has not been carried out. It is further contended that the Applicants would require some time to find out a suitable alternate place.

7 The learned Senior Counsel appearing for the Appellants – Manisha Developers Shri N V Walawalkar whilst countering the aforesaid contentions would submit that the agreement was furnished to the Applicants some time in the middle of May 2016 and till this day there has been no response from the Applicants as regards the terms and conditions which have been mentioned in the agreement. In so far as the schedule of payment is concerned, the learned Senior Counsel Shri N V Walawalkar, on instructions of Appellant No.2 Shri Govind R Naidu – the Proprietor of Manisha Developers, fairly stated that the Applicants can approach the said Manisha Developers and that appropriate facility for payment would be given to the Applicants so that they would not face any financial hardship. In so far as joint measurement is concerned, the learned Senior Counsel for the Appellants states that the same can be done latest by day after tomorrow i.e. 16/06/2016 which would be in

the presence of the officer of the Mumbai Corporation of Greater Mumbai as the permanent alternate accommodation which is to be granted to the Respondent Nos.9 and 10 would be on the basis of the area recorded in the joint measurement. In so far as continuation of the Applicants on the site in question is concerned, the learned Senior Counsel for the Appellants submitted that the building in question is found to be in ruinous and in a dilapidated condition and therefore the Applicants cannot be allowed to continue the occupation of the premises.

8 In my view, in the light of the submissions of the learned Senior Counsel for the Appellants, the grievances of the Applicants can be said to have been met. It is for the Applicants to approach the said Manisha Developers in respect of the schedule of payment. This would be in the context of the fact that as many as 9 Applicants are having commercial premises and are also residing there. It is expected that both the parties would take a reasonable stand in that regard. In so far as the joint measurement is concerned, the assurance of the learned Senior Counsel for the Appellants is accepted. In so far as occupation of the premises by the applicants is concerned, it is required to be noted that in terms of the Consent Terms the agreements are forwarded to the Applicants wherein the Applicants were to vacate the premises by 15/06/2016. The Applicants have moved the instant Civil Application therefore at the eleventh hour.

9 In my view, it would not be proper to permit the Applicants to continue the occupation of the premises especially having regard to the condition of the structure at present. However, since the learned counsel appearing for the Applicants Shri Suresh Dubey states that some time would be required for the Applicants to make alternate arrangements, the Applicants may continue to occupy the premises till 30/06/2016. However, it is clarified that they would continue to do so at their own risk and that neither the Municipal Corporation of Greater Mumbai nor the said Manisha Developers would be liable and responsible if any untoward incident takes place. It is made clear that no further extension would be sought nor would be granted. Since the building in question is found to be in ruinous and in a dilapidated condition, in the event the Applicants do not vacate the premises, the Municipal Corporation of Greater Mumbai would be free to enforce the said notice under Section 354 issued by it.

10 With the aforesaid directions, the above Civil Application is disposed of.

[R.M.SAVANT, J]