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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION (STAMP) NO.35013 OF 2015
IN
APPEAL FROM ORDER (STAMP) NO.35011 OF 2015

M/s.Mahavir Construction Co.

...Applicant

...Ori.Appellant

V/s.

Divyakant C. Shah & Ors.

...Respondents

Mr.Sanjay Jain with Ms.Aakansha Thakkar i/b Mr.Ritesh Jain for the Applicant.

Mr.Zain Mookhi with Mr.Dharampal Dave and Ms.Jindagi Shah i/b TJS Legal for the Respondents.

CORAM : R.D. DHANUKA, J.

DATE : 27TH JANUARY, 2016.

P.C. :-

1. Rule. Learned counsel appearing for the respondents waives service. Heard forthwith.

2. I have heard the parties at length. By this civil application, the applicant seeks stay of the impugned order passed by the learned trial Judge. The learned trial Judge has granted injunction against the Corporation from granting commencement certificate until the applicant executing a permanent alternate agreement in favour of the respondents.

3. Mr.Jain, learned counsel appearing for the applicant (original defendant no.6) invited my attention to the prayers in the plaint and would submit that the learned trial Judge has virtually decreed the suit in favour of the plaintiffs at the *ad-interim* stage. He submits that the applicant has already filed a suit for eviction against the respondent no.1 (original plaintiff) in the Small Causes Court at Mumbai. The said suit is pending.

4. Learned counsel also placed reliance on the judgment of the Division Bench of this court rendered on 23rd June, 2014 in Writ Petition (Lording) No.1135 of 2014 in case of **Municipal Corporation of Greater Mumbai vs. State of Maharashtra & Others** and more particularly paragraphs 9(l) and (p) and would submit that though without prejudice to the rights and contentions of the applicant, the applicant was ready and willing to execute the agreement in respect of the area admeasuring 388 sq. ft. similar to the area offered in the other agreements entered into with other tenants, the original plaintiff has refused to execute such agreement. The original plaintiff is seeking larger area from the applicant. In my *prima-facie* view, the guidelines framed by the Division Bench in Writ Petition (Lodging) No.1135 of 2014 thus would not apply in this situation.

5. Learned counsel appearing for the original plaintiff on the other hand submits that the building is already demolished and thus

the applicant shall be directed to safeguard the area which the original plaintiff would be entitled to in lieu of the existing area which was in possession of the tenant through whom, the plaintiff is claiming rights in the suit property.

6. The matter was adjourned from time to time to enable the parties to settle the dispute amicably.

7. The other tenants, who are situated on the plot have been already shifted. The project of the redevelopment cannot be stalled by the original plaintiff.

8. The defendant no.6 has already rendered an undertaking before the trial Court that in the event of the plaintiff proving his entitlement for larger area before the learned trial Judge, the applicant would pay the amount of compensation as may be ordered by the learned trial Judge. In my view, in view of such undertaking also rendered by the applicant, the impugned order passed by the learned trial Judge deserves to be stayed. It is ordered accordingly.

9. The civil application is accordingly disposed of. No order as to costs.

(R.D. DHANUKA, J.)