

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

APPEAL FROM ORDER NO. 342 OF 2014

Saifee Burhani Upliftment Trust ... Appellant
V/s.
Ms. Farida Hasanali Nulwala & Ors. ... Respondents

Mr. Rajesh Patil and Ms. Yogini Borade i/b J. Sagar for the Appellant.
Ms. Brenelle Cardoz h/f Mr. Rajendra Rathod for Respondent Nos.1 and 2.
Mr. G.B. Walawalkar h/f Mr. S.P. Thorat for MHADA-Respondent Nos.6 and 7.

CORAM : M.S. SONAK, J.
DATE : 29th MARCH, 2017.

P.C. :

1 Heard Mr. Rajesh Patil for the appellant (Original Defendant No.4), Ms. Brenelle Cardoz h/f Mr. Rajendra Rathod for respondent Nos.1 and 2 (original plaintiffs), Mr. Walawalkar for Respondent Nos.6 and 7.

2 The challenge in this Appeal was to the order dated 10.02.2014 by which the learned Trial Judge had granted ad-interim injunction in terms of prayer clause (a) as a draft Notice of Motion.

3 Mr. Patil, learned counsel for appellant, points out that this Appeal was admitted on 27.03.2014 and on the same day, the impugned order was stayed by a separate order made in Civil Application No.396 of 2014 reads thus :-

“1 Leave to amend the civil application is granted.

2 Respondents nos.1 and 2 have filed a suit in the City Civil Court for a declaration that they have a right in the suit premises, and for a direction that, the premises be sold for giving them their share in it. They also seek a permanent injunction to restrain the defendants inter alia from creating any third party rights in respect of the suit premises. The appellant is the developer, who is redeveloping the building in which the suit premises are situate. Respondents nos.3, 4 and 5 are the brothers and sister of respondents nos.1 and 2. Respondents nos.6 and 7 are the Officers of Mumbai Building Repairs & Reconstruction Board. Respondents nos.1 and 2 allege that respondents nos.3 to 5 are attempting to deprive them of their rights in the suit premises, which originally belonged to their father. There are proceedings filed by respondents nos.1 and 2 against respondents nos.3 and 4 under the Domestic Violence Act, in which the brothers have been restrained from dispossessing the sisters from the suit premises. The building in which the suit premises are situate, is being redeveloped by the appellant. In the process of redevelopment when the appellant started the work of demolition of the building, respondents nos.1 and 2 rushed to the court with the suit for the reliefs as mentioned above.

They took out Notice of motion for an interim injunction to restrain the appellant and the other defendants to the suit from demolishing the building in which the suit premises are situate. One of the arguments advanced by respondents nos.1 and 2 before the Bombay City Civil Court was that in view of the order of injunction passed by the court of Metropolitan Magistrate against respondents nos.4 and 5 the brothers, the building cannot be allowed to be demolished, because this would amount dispossession of respondents nos.1 and 2.

3 The relief sought in the notice of motion travels way beyond the main reliefs in the suit filed by respondents nos.1 and 2. Perusal of the plaint also shows that the same is defective in several aspects. The prayers in the suit are not only not properly worded, but also do not describe the premises in respect of which the reliefs are sought by respondents nos.1 and 2. The photographs produced by the appellant show that the building in which the suit premises are situated is substantially demolished. The occupants in the building have vacated the same. The photographs in respect of the very premises for which respondents nos.1 and 2 are fighting, indicate that the same are also not occupied by anybody. Considering the extent of demolition of the building, unless the work of demolition is completed, there is every likelihood of some mishap happening, affecting the lives and properties of the persons in the neighbourhood. Therefore, the work of demolition cannot be left incomplete. In any case, demolition of the building will not affect the right of respondents nos.1 and 2 claimed in the suit premises, because the permanent alternate accommodation would be available in lieu of the suit premises and respondents nos.1 and 2 can continue to agitate their rights in

respect of the premises to be allotted in the newly constructed building. Hence the civil application is allowed in terms of Prayer Clause (a).”

4 The aforesaid means that atleast from 27.03.2014, there is no ad-interim order in operation. However, this ought not to have come in the way of the learned Trial Judge disposing of the Notice of Motion taken out by respondent Nos.1 and 2 (original plaintiffs). Accordingly, the learned Trial Judge is directed to dispose of the plaintiff's Notice of Motion on its own merits and in accordance with law, as expeditiously as possible and in any case within the period of eight weeks from today. Until disposal of the Notice of Motion, there shall be no ad-interim relief, since, the impugned order dated 10.02.2014, is now formally set aside. However, it is made clear that none of the observations made by this Court in its order dated 27.03.2014, or for that matter, the present order, shall in any manner influence the learned Trial Judge in deciding the Notice of Motion on its own merits and in accordance with law.

5 All contentions of all the parties are left open.

6 The Appeal is disposed of in the aforesaid terms.

7 The Civil Application does not survive and the same is
disposed of accordingly.

8 All concerned to act on the basis of authenticated copy
of this order.

(M.S. SONAK, J.)