

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 299 OF 2014
AND
CIVIL APPLICATION NO. 352 OF 2014

Vijaya R. Gurav .. Appellant
vs.
M/s. Malde Properties Pvt. Ltd. and ors. .. Respondents

Ms Rajashree R. Gurav for the Appellant.
Mr. Ajay Basutkar for respondent No.1
Mr. Kalpesh Patil and Mr. V.D. Patil for Respondent No.3.

CORAM : M. S. SONAK, J.
DATE : 18 JANUARY 2017.

P.C. :-

- 1] Heard learned counsel for the parties.
- 2] The challenge in this appeal is to the order dated 3 March 2014 made by learned City Civil Court, Gr. Mumbai dismissing the appellant's notice of motion and vacating the ad-interim reliefs granted earlier.
- 3] Ms Rajashree Gurav, learned counsel for the appellant, submits that there are certain matrimonial disputes pending between the appellant and her husband. In order to prejudice the appellant, it is alleged that the appellant's husband has signed certain documents, as a result of which, the appellant is being deprived of her entitlement. Ms Gurav submits that without prejudice, the appellant is willing to accept alternate premises indicated at serial No.3 in the building plan. However, she submits that this is clearly without prejudice since the basic case of the appellant is that her husband

has no right to sign any documents in relation to the suit structure which she personally occupies. Ms Gurav points out that there is already a matter pending before the Magistrate under the provisions of the Protection of Women from Domestic Violence Act, 2005 and in which, there is already an injunction granted restraining the appellant's husband from dealing with the suit structure.

4] Mr. Ajay Basutkar, learned counsel for respondent No.1, submits that in Annexure-II prepared by the Maharashtra Housing and Area Development Authority (MHADA), the name of appellant's husband is indicated as against structure No.7 for purposes of entitlement. Mr. Basutkar submits that structure No.7 is comprises of both commercial as well as residential and the same is ready and respondent No.1 has no objection for allotment of the same to the appellant, without prejudice. Mr. Basutkar submits that in case, since Annexure-II refers to the name of the appellant's husband, the actual allotment is required to be made to the appellant's husband. However, without prejudice and subject to any orders being made by this court or the civil court, respondent No.1 will hand over the premises at serial No.7 to the appellant. He submits that learned Trial Judge has recorded that Annexure-II has not been challenged in the suit. He submits that Annexure-II was prepared long time ago and as a developer, respondent No.1 is obliged to comply with Annexure-II. He submit that there is absolutely no justification on the part of the appellant in insisting upon continuing in the suit structure. He submits that respondent No.1 is really not concerned with the matrimonial disputes between the appellant and appellant's husband and no orders made in the proceedings *inter se* between

them or either bind or affects the rights of respondent No.1.

5] Ms Gurav, learned counsel for the appellant, submits that Annexure-II has already been challenged by the appellant before the appropriate authorities. She states that the matter will be pursued by the appellant before the appropriate authorities, since, according to the appellant, there are serious errors in indicating the name of the appellant as against structure at serial No.7. Instead, she submits that either the appellant ought to be permitted to continue in the suit structure or without prejudice, the appellant should be allotted shop No. 3 which has a substantial road frontage. She submits that structure at serial No.7 faces garbage bin and consequently, it will be impossible for the appellant to undertake any commercial activities from out of the structure at serial No.7.

6] In the plaint, there is no challenge to Annexure-II. This is perhaps because the civil court may not be *prima facie*, entitled to go into the challenges to Annexure-II. The appellant has rightly approached the appropriate authorities with regard to her grievances in connection with Annexure-II. The challenge, according to learned counsel for the appellant, is pending before the appropriate authorities. If this be the position, some reasonable time can always be granted to the appellant to sort out these matters. This is because if the appropriate authorities indeed make any modification to Annexure-II, then such modification will obviously bind respondent No.1, i.e., developer.

7] Ms Gurav, learned counsel for the appellant, submitted that 12 weeks time would be a reasonable period to enable the appellant to sort out the matters with appropriate authorities in relation to the appellant's grievances concerning Annexure-II. In the facts and circumstances of the present case, taking into consideration that the appellant is already having some matrimonial disputes with her husband, 16 weeks time can be granted to the appellant for this purpose. Accordingly, 16 weeks are granted to the appellant for the purposes of sorting out her grievances in relation to Annexure-II.

8] In the meantime, respondent No.1 can also utilise this period of 16 weeks in order to see if the garbage bin in front of structure at serial No.7 is relocated to some other place. Learned counsel for respondent No.1 submits that this process will involve obtaining permission from the Municipal Corporation of Greater Mumbai (MCGM) and that respondent No.1 will utilise this time and make sincere efforts for relocation of garbage bin. It is made clear that there is no direction as such being issued in this regard. However, if respondent No.1 is successful in relocating the garbage bin, the same will perhaps assist in speedy resolution of the disputes between the parties.

9] There is really no reason to interfere with the impugned order, since, the impugned order states that the parties have to comply with Annexure-II as it presently stands. No doubt, if ultimately Annexure-II is modified, then the parties will have to abide by the modified Annexure-II. The civil court, at least for the present, was justified in proceeding on the basis that Annexure-II is valid. In

terms of Annexure-II, the appellant's husband is held entitled to the premises at structure No.7. From the plan produced for my perusal, this structure comprises both residential and as well as commercial premises. The circumstance that Annexure-II refers to the name of the appellant's husband, does not mean at least *prima facie* that the appellant has no rights in respect of such structure. No doubt, these matters can be resolved in the proceedings pending between the appellant and her husband. However, it is also the case of respondent No.1 that presently the suit structure at the site is in occupation of the appellant. Therefore, if the possession of the suit structure is to be taken from the appellant, then respondent No. 1 is duty bound to place the appellant in possession either structure No.7 as indicated in Annexure-II or if Annexure-II itself is modified, then as per the modification thereto.

10] Learned counsel for the appellant contends that the suit structure as it presently stands, does not obstruct any further development on the plot, since most of the development works are completed. The development is in relation to the plot. In such circumstances, the appellant cannot insist upon continuing in the suit structure on the basis that there is some dispute pending in regards to her precise entitlement. At least as of now in terms of Annexure-II exists, the appellant will have to be rehabilitated at structure No.7. This means that the appellant if vacates the suit structure, the appellant will be accommodated in structure No.7 in the new building which is ready for use. This structure, as is evident from the plan shown by learned counsel for respondent No.1, is meant for commercial as well as residential use. If the appellant is

successful in modifying Annexure-II, then respondent No.1 may have to allot the structure in accordance with modified Annexure-II. Therefore, for a period of 16 weeks from today, respondent No.1 shall not take any steps to disturb the possession of the appellant in the suit structure. After 16 weeks, however, the appellant will have to shift either to structure No.7 or to such other structure/premise as per the modified Annexure-II, if, within a period of 16 weeks such modification is granted in respect of Annexure-II.

11] The appellant shall, however, have no protection of any interim relief after 16 weeks. If there is no modification to Annexure-II within 16 weeks, the appellant will have to shift structure No.7 without prejudice to her rights and contentions. Further, it is made clear that even if the appellant shifts to structure No.7 or any other structure if Annexure-II is modified in the meanwhile, the same shall be without prejudice to her rights and contentions in the suit or any other proceedings, which she may have initiated. Therefore, respondent No.1 shall not insist upon the appellant executing any agreements. It is made clear that this shall be interim arrangement, subject to any final orders that may be made in the suit.

12] The authorities before whom the appellant has applied for modification of Annexure-II are requested to dispose of such request in accordance with law, as expeditiously as possible.

13] The appeal from order is, therefore, disposed of with the following order:

a] For a period of 16 weeks from today, the respondents shall not evict the appellant from the suit premises;

b] If within period of 16 weeks Annexure-II is not modified, the appellant will have to vacate the suit premises and shift into structure No.7, which is already ready for allotment to the appellant as per existing Annexure-II;

c] If Annexure-II is modified in the meanwhile and some other structure is allotted to the appellant, respondent No.1 shall ensure that the appellant is accommodated in such structure as per the modified Annexure-II, before any of the respondents proceed to secure the vacant possession of the suit structure;

d] The vacation of the suit structure and the occupation of structure No.7 or such other structure by the appellant, if Annexure-II is modified in the meanwhile, shall be without prejudice to the appellant's rights and contentions in the suit or any other proceedings which she may have instituted. Therefore, respondent No.1 shall not insist that the appellant signs any agreements or otherwise gives up her rights and contentions pending disposal of the suit or such other proceedings which the appellant may have initiated;

e) Since, a period of 16 weeks has been granted to the appellant to secure modification of Annexure-II, even though, the appellant was requesting for 12 weeks, it is made clear that if the appellant is unable to obtain modification of Annexure-II within a period of 16 weeks from today, the appellant shall, without any further objections, vacate the suit structure and shifts into structure No.7. If this is not done, the respondents shall be entitled to take appropriate actions for ensuring compliance;

f) The aforesaid arrangement shall operate during pendency of the suit and shall therefore be subject to further orders that shall be made in the suit; and

g] All contentions of all parties are kept open to be determined by the Trial Court in the pending suit.

14] In view of disposal of the main appeal, the civil application does not survive and the same is also disposed of.

(M. S. SONAK, J.)

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