

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**SECOND APPEAL NO.821 OF 2016
WITH
CIVIL APPLICATION NO.1622 OF 2016
IN
SECOND APPEAL NO.821 OF 2016**

M/s. Om Enterprises

...Appellant
(Org. Defendant No.1)

vs.

Shri. Dwarkanath Shankar Khare & Anr.

...Respondents

....

Mr. S.M. Oak, a/w. Sagar Joshi, i/b. S.C. Wakankar, for the Appellant.

Mr. Saurabh Oka, for Respondent No.1.

.....

CORAM : S.C. GUPTE, J.

DATED : 13 FEBRUARY 2017

P.C. :

. Heard learned Counsel for the parties. This Second Appeal challenges the judgment and order passed by the District Court at Thane in Regular Civil Appeal No.152 of 2014. By the impugned judgment and order, the learned District Judge dismissed the appeal filed by the Appellant herein from a judgment and decree passed by the Civil Judge, Senior Division at Thane in Regular Civil Suit No.1201 of 1996 decreeing partly the suit filed by Respondent No.1.

2. The case of Respondent No.1 (Original Plaintiff) in the suit was that he was a tenant in occupation of the suit premises, which

consisted of a tenement admeasuring about 307 sq. ft. built up area in a building standing on plot bearing Tika No.2, City Survey No.27 at Bhandar Alley, Thane. The building was demolished by Respondent No.2 (original Defendant No.2) through its Fire Department, as the building had partly collapsed. Respondent No.1 claimed to be entitled to premises in the new building which was proposed to be constructed by the Appellant herein (original Defendant No.1). The suit was partly decreed by the Trial Court by declaring the subsistence of the tenancy rights of Respondent No.1 and also his entitlement to occupy a tenement admeasuring 210 sq.ft. in the new building to be constructed on the suit land. The Trial Court also directed the Appellant to deliver possession of this tenement to Respondent No.1. It also granted the other prayer for perpetual injunction. The First Appeal filed before the District Court was dismissed and the judgment and decree of the Trial Court was confirmed.

3. The Second Appeal contains various grounds, most of which, it is admitted by learned Counsel for the Appellant, have been duly covered by judgments. The only contention pressed before this Court by learned Counsel for the Appellant is that the Appellant was carrying on construction in the new building under an unregistered development agreement executed between itself and the landlord of Respondent No.1. It is submitted that there was no transfer of ownership of the suit land in favour of the Appellant. It is submitted, in the premises, that the Appellant has no privity of contract or action as between itself and Respondent No.1. In particular, it is submitted that there is no relation of landlord and tenant between the Appellant and Respondent No.1.

There is no merit in this contention. It is not material that the title of the suit land has not yet been transferred by the landlord of Respondent No.1 in favour of the Appellant herein. What is important is that the construction of the new building is being caused by the landlord through the Appellant and such construction cannot prejudice the tenancy rights of Respondent No.1. Inasmuch as the original landlord is bound to put Respondent No.1 in possession of alternative premises in the new building in lieu of its old tenement, the Appellant is likewise liable to do so.

4. There is, accordingly, no merit in the Second Appeal. The Second Appeal is, in the premises, dismissed.

5. In view of the dismissal of the Second Appeal, the Civil Application does not survive and the same is also disposed of.

6. Learned Counsel for the Appellant seeks stay of execution of this order. All this while, after the impugned judgment and order of the first Appellate Court and during the pendency of the present appeal, the Appellant did not have any relief in its favour. There is no question of granting any interim protection, even limited, for that matter, to the Appellant now when the appeal has been comprehensively dismissed after hearing the parties. The application for stay is, accordingly, rejected.

(S.C. GUPTE, J.)