

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER No. 923 OF 2015
WITH
CIVIL APPLICATION No. 1123 OF 2015 IN A.O. No. 923 OF 2015

Anil Prabhakar Sinkar ... Appellant/Applicant
Vs.

The Vice President and Chief
Executive Officer, MHADA & Ors. ... Respondents

Mr. Sandeep V. Bane, Advocate for the appellant/applicant.
Mr. Vaibhav M. Parashurami, Advocate for respondent nos. 1 and 2.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **14th August, 2017.**

P.C.:

Admit. By consent, the Appeal from Order is heard finally and decided at the stage of admission.

2. This Appeal from Order takes an exception against the order dated 6th May, 2015 passed by the learned Judge of the City Civil Court, Mumbai in Notice of Motion No. 3891 of 2014 in S.C. Suit No. 2834 of 2014. The appellant is a plaintiff, who has filed the suit for declaration and demanded the possession of room No. 2A which is adjacent to his flat No. 2 in one Ram Bhuvan, N.C. Kelkar Road, Dadar (W). The suit premises is owned by MHADA.

3. It is the case of the appellant that in the year 2004, the said room was allotted to him. The decision of allotment to flat to the appellant was confirmed in the meeting of MHADA in the year 2005. Despite this, one Sharad Kisan Awati/defendant No. 3 was given possession of the suit room in the year 2009 on the pretext that the suit room was already allotted to defendant No. 3 in the year 1999, so he filed Writ Petition No. 544 of 2009 before the Division Bench challenging the said allotment and MHADA/contesting defendant filed affidavit-in-reply wherein MHADA has disclosed that the allotment of the suit room was in favour of defendant No.3/Sharad Kisan Awati in the year 1999. The appellant thereafter approached Lok Ayukt and Vigilance officer of MHADA was appointed. The vigilance officer submitted the report and in the year 2013, the allotment in favour of Sharad Kisan Awati was cancelled by MHADA. However, in between, defendant no. 3/Sharad Kisan Awati has put in possession defendant No. 4/ Usha Sakpal of the suit premises. Notice of Motion was taken out by the appellant/plaintiff seeking that no third party right is to be created by the defendants and also sought an order that enquiry to be conducted by MHADA against defendant nos. 3 and 4. The trial Court has partly allowed the Notice of Motion and directed MHADA and concerned defendants not to create third party interest

in the suit property till the disposal of the suit. However, the trial Court did not grant relief giving directions to MHADA to conduct enquiry against defendant nos. 3 and 4. Hence, the plaintiff has filed this Appeal from Order.

4. Heard the submissions of learned counsel for the appellant and learned counsel for respondent nos. 1 and 2/MHADA. After going through the facts of the case, the prayers made in the suit and the submissions of the learned counsel of both the sides, I am of the view that no interference is required in the order passed by the learned Judge of the City Civil Court, Mumbai. The suit is of 2014 and it is in the interest of the appellant to proceed with the matter before the trial Court. Hence, Appeal from Order is dismissed.

5. Civil Application is also accordingly disposed of.

(MRIDULA BHATKAR, J.)