

psv

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

**CIVIL APPLICATION NO.297 OF 2017
IN
CIVIL REVISION APPLICATION NO.504 OF 2016**

Colo Color Private Limited through its Director Shri Deepak Devji Patel	...Applicant
Vs.	
Mrs.R.A. Thandani (deceased) through Harish Arjun Thadani	..Respondent.

**WITH
CIVIL REVISION APPLICATION NO.504 OF 2016**

Mrs.R.A. Thandani (deceased), Harish Arjun Thadani & Anr.	..Petitioners
Vs.	
Devchand Hirji Sangoi @ Shah & Ors.	..Respondents

**WITH
CIVIL REVISION APPLICATION NO.485 OF 2016**

Dr.Kamlakant Shantaram Desai	..Petitioner
Vs.	
Smt.Sushilabai Sitaram Navalkar (deleted since deceased) & Ors.	..Respondents

Mr.Sanskar Marathe for Petitioner.
Mr.Haridas Rajesh M. for Respondents.
Mr.Mukesh Chheda for Applicant in CAC 297/17.
Mr.Kaustubh Thipsay for Petitioner in CRA 485/16.

CORAM : G.S. KULKARNI, J.

DATE : 18th DECEMBER, 2017

P.C.:

This application is filed by the intervenor Colo Color Private Limited who claims to be new owner of the suit property. The applicant is undertaking development in respect of Final Plot Nos.484, 485 and 488A which have been amalgamated and now is given Final Plot No.484 under Town Planning Scheme - IV on which the suit premises are situated.

2. Case of the applicant is that the plans for development of the final plot have been granted an approval for redevelopment of the plot which would be undertaken as per Regulation 33(7) of Development Control Regulations, 1991. There are 67 tenements, commercial and residential which are occupied by tenants/occupants. The applicant has already entered into agreements for permanent alternate accommodation with 57 tenants/occupants. The case of the applicant is that the earlier Civil Application as moved by the applicant (Civil Application No.26 of 2017) was disposed of by this Court in terms of the following order:-

“2. The Civil Application is taken out by the Developer in respect of the order dated 14 December, 2016, which was passed after hearing both the sides, placing the Revision Applicants under restraint in not signing any documentation till further orders. As far as the Civil Application is concerned, there is no restraint on the Respondents in the Revision Application who have succeeded in both the Courts to enter into any agreement with the Developer-Applicant. It is needless to state that if the Developer proceeds to enter into any

agreement with the Respondents, it would be subject to the outcome of the present Revision Application. In these circumstances, the Civil Application need not be entertained and is accordingly disposed of.”

3. The prayer today as made in this Civil Application is that for the re-development to be undertaken which is agreeable to the original parties i.e. revision petitioner and the original respondent/tenant, an interim arrangement is required to be made so that the applicant can undertake development and after completion of development, permanent alternate premises can be allotted to one of the disputing party who would ultimately become entitled for the permanent alternate accommodation.

4. On the above background, The applicant's prayers are as under:-

“a) that the Appellant be directed to join the Applicant as party Respondent to the above proceedings;

b) that appoint a Court Receiver with whom the Applicant can enter into an Agreement for Permanent Alternate Accommodation on behalf of the Appellant/ Respondent;

c) to permit the Applicant to deposit Rs.6,03,031/- every 11 months until possession of the Permanent Alternate Accommodation towards the compensation for temporary alternate accommodation which could be withdrawn by the Appellant on furnishing a Bank Guarantee of equivalent amount.”

5. Having heard learned Counsel for the parties, the parties are *ad idem* that the development being undertaken by the applicant cannot be prevented and that the parties are agreeable that in the interregnum, some arrangement is required to be worked out. The contention as urged by Mr.Haridas, learned Counsel for the respondent/tenant, is that his client will become entitled for the amount of Rs.6,03,031/- for every 11 months which would be paid by the applicant towards the compensation for temporary alternate accommodation, applying the principles as laid down by the Supreme Court in case of Atma Ram Private Properties v/s. Federal Motors (P.) Ltd.¹ and State of Maharashtra & Anr. Vs. M/s.Super Max International Pvt. Ltd. & Ors.² and thus his client who would be entitled to make a claim for payment of interim compensation pending the adjudication of the Civil Revision Application.

6. On the other hand, Mr.Marathe, learned Counsel for the petitioner, would dispute the contention of Mr.Haridas learned Counsel for the respondent, to submit that the amount which is being offered is to compensate for the loss of possession for the premises to be taken over for the re-development and the amount so received, would be utilized for the temporary alternate accommodation, which his client would be required to procure till the re-development is complete. Mr.Marathe would submit that subject to receiving the amount being offered by the applicant and

1 2005(1) SCC 705

2 2009(9) SCC 772

his clients rights being protected till adjudication of the Civil Revision proceedings, his client would not have any objection to vacate the premises and hand over possession to the applicant/developer and that on the completion of the development, the Court may pass appropriate orders which should be subject to the outcome of the Civil Revision Application, the adjudication of which, would decide which of the parties shall become entitled to the permanent alternate accommodation.

7. In view of the above submissions, in my opinion, interest of justice would be served, if the following order is passed:-

ORDER

- i. The Court Receiver, High Court, Bombay, is appointed as a Receiver in respect of the Shop No.8 (suit premises) who shall take formal possession of the said premises and hand over the same to the applicant;
- ii. As the petitioner is in possession of the suit premises, the applicant shall make payment of Rs.6,03,031/- to the petitioner every 11 months as being paid to the other tenants;
- iii. Such amounts shall be continued to be paid by the applicant to the revision petitioner till the development is complete without any default;
- iv. Respondent in the Revision Application/tenant is at liberty to file appropriate proceeding seeking any interim compensation, if any, to be fixed by the Court pending the adjudication of the Civil Revision Application;
- v. All contentions of the parties in that regard are expressly kept open;

vi The applicant shall bear costs and expenses of the Receiver.

8. Mr.Chheda, learned Counsel for the applicant, states that his client shall make payment of the amount of Rs.6,03,031/- within a period of two days from today and on receipt of such amount, Mr.Marathe, learned Counsel for petitioner states that his client shall vacate the premises within two weeks from the receipt of such payment.

9. The parties agree that the above arrangement shall be brought to the notice of MHADA in the 95A eviction proceedings.

10. In view of the above directions, it is appropriate that the applicant be added as a party to the petition. Intervention of the applicant is accordingly allowed.

11. Necessary amendment be carried out within a period of one week from today.

12. Civil Application is accordingly disposed of in above terms.
No costs.

Parties to act on authenticated copy of the order.

[G.S. KULKARNI, J.]