

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

**APPEAL FROM ORDER NO.23 OF 2017
ALONGWITH
CIVIL APPLICATION NO.28 OF 2017
IN
APPEAL FROM ORDER NO.23 OF 2017**

Mr. Haresh Meghji Shah	...	Applicant/Appellant
Versus		
M/s Ajanta Exhibitors	...	Respondent

.....

Mr. Vineet B. Naik, Senior Advocate a/w Sukand Kulkarni i/b Mr. V.T. Lulia
for the Applicant/Appellant.

Mr. C.G. Gavanekar i/b J.N. Chodankar for the Respondent.

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CORAM : S.C. GUPTE, J.

DATE : 24 APRIL 2017

P.C. :

. Heard learned Counsel for the parties.

2 The civil application is taken out in an Appeal from Order. The Appeal from Order challenges an order passed by the City Civil Court at Dindoshi, Borivali Division, Goregaon, Bombay, in a Notice of Motion filed by the Appellant herein (original Plaintiff). In the Notice of Motion, the Plaintiff has claimed certain reliefs in respect of an alternate accommodation to be given to the Plaintiff in a redevelopment project.

3 The Plaintiff's father Meghji Jethalal Shah ("Meghji") was the

original tenant of the Defendant. The Defendant had filed an ejectment suit in the Small Causes Court at Bombay. Pending that suit, Meghji died on 13 April 1997. It appears that disputes between the Defendant landlord and the Plaintiff herein were settled *inter alia* by increasing the rent payable for the premises. Despite this settlement, the Defendant landlord took out a Notice of Motion for bringing legal heirs of Meghji on record in RAE Suit No.683/2221 of 1987. That order was challenged in an appeal and later before this Court in Writ Petition No.9787 of 2004. In the writ petition, the parties entered into an agreement providing an alternate permanent accommodation to the Plaintiff. This accommodation was to be of an area 2100 sq ft carpet, on 4th floor of the new building to be constructed in place of the existing building. The Defendant landlord also agreed to pay compensation in a sum of Rs.30,000/- per month during the construction period, to enable the Plaintiff to secure an alternative transit accommodation during the period. Subsequently, the disputes between the parties were finally settled by filing of consent terms in the pending writ petition. This Court accepted the consent terms and disposed of the writ petition in terms thereof.

4 It appears that the new building has been fully constructed. It is, however, the grievance of the Plaintiff that the permanent alternate accommodation promised by the Defendant was not given to him in the new building. According to the Defendant landlord, whereas the Defendant was ready to perform its obligation under the consent terms, the difficulty arose as a result of proceedings filed by one Smt. Manjula Shah ("Manjula") and three others, who claim to be legal heirs of the deceased Meghji, and entitled as such legal heirs to the suit premises and / or

permanent alternate accommodation in lieu thereof alongwith the Plaintiff herein. It is submitted by the Defendant that it has given an undertaking to this Court in an Appeal from Order arising out of the Small Causes Court proceedings that they would hand over possession either to Manjula or the Plaintiff herein, subject to the decision of the pending proceedings before the Small Causes Court of Manjula and three others, and would not part with possession of such permanent alternate accommodation till the disposal of the suit. In the premises, it is submitted that since RAD & E Suit No.164/394 of 2008 filed by Manjula and three others is still pending before the Small Causes Court and the undertaking given by the Defendant to this Court continues to operate pending that suit, possession of permanent alternate accommodation cannot be given to the Plaintiff herein. The Defendant is, however, prepared to hand over possession of the premises admeasuring 2100 sq ft on the second floor, on north side, in the new building (currently occupied by Samsung) to the Plaintiff during the pendency of the RAD & E suit filed by Manjula and three others in the Small Causes Court. Learned Counsel for the Defendant submits that this premises can be occupied by the Plaintiff till the *inter se* rights between Manjula and three others on the one hand and the Plaintiff on the other, are determined by the Small Causes Court and permanent alternate accommodation is handed over to either or both on the basis of such determination. The Plaintiff is also prepared to accept this temporary alternative accommodation offered to him, on the terms offered by the Defendant.

5 It is pertinent to note that the intervention application filed by Manjula and three others in the Plaintiff's own suit has been rejected by the

Trial Court, i.e. City Civil Court at Bombay, which rejection has been since confirmed by this Court in a writ petition arising out of that order.

6 In the premises, the Appeal from Order is disposed of in terms of the following order :-

(i) The Respondent (original Defendant) shall hand over possession of the premises admeasuring 2100 sq ft on the 2nd floor, on north side, in the new building (currently occupied by Samsung) to the Applicant/Appellant (original Plaintiff) on the following terms :-

(a) The Applicant/Appellant shall be entitled to occupy this premises till determination of *inter se* rights as between Manjula and three others on the one hand and the Applicant/appellant on the other in RAD & E Suit No. 164/394 of 2008;

(b) In the event such rights being finally decided by the Small Causes Court in RAD & E Suit No.164/394 of 2008, the Applicant/Appellant shall return possession of the premises mentioned in clause-(i) above to the Respondent, against the Respondent handing over permanent alternate accommodation to the party entitled to it in accordance with the determination of the Small Causes Court. The Applicant/appellant undertakes to the Court accordingly to hand over possession of the premises described in clause-(i)

above to the Respondent. The undertaking is accepted;

(c) Learned Counsel for the Respondent informs the Court that the arrears of compensation payable by the Respondent to the Applicant/Appellant in terms of the order dated 30 August 2016 have been duly paid upto date. In the event, however, of there being any balance payable from out of the arrears, the Respondent shall pay the same to the Applicant/Appellant within a period of four weeks from today. The Applicant/Appellant shall be entitled to withdraw the amount deposited by the Respondent without prejudice to his rights and conditions as to the correct measure of compensation payable by the Respondent to the Applicant/Appellant;

(d) After possession of the premises described in clause-(i) as above, is handed over by the Respondent to the Applicant/Appellant, the responsibility of the Respondent to pay any compensation to the Applicant/Appellant towards transit accommodation in terms of the consent terms/impugned order, shall cease;

(e) The question of correct measure of compensation payable by the Respondent to the Applicant/Appellant till the date of handing over possession of the premises described in clause-(i), is kept open, to be decided in S.C. Suit No.2457 of

2012 pending before the City Civil Court at Dindoshi, Borivali Division, Goregaon, Mumbai;

(ii) In view of the disposal of the Appeal from Order, the civil application does not survive and the same is also disposed of.

(iii) No order as to costs.

(iv) Both parties agree that in view of this order, the contempt petition between the parties shall not be pressed and shall be disposed of by seeking an appropriate order from the Court to that effect.

(S.C. GUPTE, J.)