

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

**APPEAL FROM ORDER (ST.) NO. 34284 OF 2015
WITH
CIVIL APPLICATION (ST.) NO. 34285 OF 2015
IN
APPEAL FROM ORDER (ST.) NO. 34284 OF 2015**

Mr. Sheikh Ahmed Abdulla & Ors. ... Appellants
V/s.
Smt. Rabiya Abdul Salam & Ors. ... Respondents

Ms. Swati D. Sawant for the Appellants.
Mr. M.S. Kadu for Respondent Nos.1 and 2.
Mr. Sharad Wakchoure i/b Kishore Thakordas & Co. for Respondent No.5.
Mrs. M.R. Bhoir, for Respondent No.2-M.C.G.M.

**CORAM : M.S. SONAK, J.
DATE : 29th MARCH, 2017.**

P.C. :

1 Heard learned counsel for the parties.

2 The challenge in this Appeal is to the order dated 09.10.2015 made by the learned Trial Judge dismissing the appellants/plaintiffs Notice of Motion No.907 of 2014. In the said Notice of Motion, the appellants, had sought for a restraint on transfer of rent receipt in the name of defendant Nos.1 and 2 by defendant No.3.

3 The learned counsel for the appellants submit that in the litigation earlier instituted by defendant Nos.1 and 2, defendant Nos.1 and 2 had admitted that they are joint tenants in respect of the suit premises along with the appellants. She submits further that defendant No.3 in the Suit, is required to be restrained from transferring the rent receipt in the name of defendant Nos.1 and 2.

4 The learned Trial Judge, has taken note of circumstance that the suit premises were demolished for the purpose of redevelopment. In fact, the redeveloped premises are ready and the builder/developer is keen on handing over on possession of the suit premises to defendant Nos.1 and 2. The builder/developer submits that in the Annexure-2, it is the name of defendant No.1 which was indicated as the occupant. He points out that until he places defendant No.1 in possession of the suit premises, he is obliged to pay to defendant No.1, rent, in lieu of permanent alternate accommodation. He submits that he is not in any manner concerned with the *inter se* dispute between appellants on one hand and defendant Nos.1 and 2 on the other.

5 The learned Trial Judge has also taken cognizance of the dispute pending before the Municipal Corporation of Greater Mumbai (M.C.G.M.) with regard to the entitlement of the suit premises consequent upon the redevelopment. This Court, by its order dated 28.04.2016, had directed the M.C.G.M., to conclude the enquiry and to place on record its position in the matter of entitlement of the rival parties. Since this was not done on 17.03.2017, the M.C.G.M. was once again directed to report compliance of the order dated 28.04.2016. Today, Mrs. Bhoir, learned counsel for M.C.G.M., has placed on record the decision of the M.C.G.M. which is dated 27.03.2017. In terms of such decision, the M.C.G.M. has held that it is defendant No.1 in the Suit, who has to be placed in possession of the suit premises consequent upon redevelopment.

6 The M.C.G.M., obviously, cannot decide *inter se* civil dispute between the parties. Such disputes have to be necessarily decided in the Civil Court in the pending suit. However, there is no case made out to interfere with the impugned order made by the learned Trial Judge, to the extent, it declines any interim relief to the appellants. The material on record, does indicate that it is

defendant No.1 who is in possession of suit premises at the time when the premises were taken up for redevelopment. This is the reason why defendant No.1 is reflected in Annexure-2. However, as pointed out by Ms. Sawant, learned counsel for the appellants, in the previous litigation it does appear that defendant No.1 had stated that the defendant Nos.1 and 2 are joint tenants along with the appellants. All these matters will have to be decided in the pending suit. Therefore, although there is no necessity to interfere with the impugned order, Defendant No.1 is required to put certain terms ultimately in the suit, such that if the appellants succeed, then, some amount should be available for payment to the appellants in respect of the suit premises which are to be occupied by defendant No.1 in terms of the order made by the M.C.G.M.

7 Accordingly, the impugned order is not interfered with. However, if defendant No.1 takes possession of the suit premises in pursuance of the order made by the M.C.G.M. on 27.03.2017, then, defendant No.1 is directed to deposit before the Trial Court, an amount of Rs.5,000/- on or before 10th day of each month. First installment of such deposit shall be made on 10.05.2017. The learned Trial Judge is directed to invest such amount in a

Nationalized Bank and the fate of such amount shall be subject to the final orders in the Suit.

8 It is made clear that the observations in the impugned order or for that matter, the present matter are only prima facie and, therefore, the learned Trial Judge need not be influenced by such observation while disposing the matter finally on its own merits.

9 The learned counsel for the appellants requested for restraint upon defendant No.1 in the matter of creating any third party rights or parting with the possession of the suit premises during the pendency of the suit. The learned counsel for defendant No.1 states that there is already order to this effect made by the learned Trial Judge. In such a case, there is no necessity of making any further orders in this regard.

10 Appeal is disposed of in the aforesaid terms. The interim orders are vacated.

11 All concerned to act on the basis of authenticated copy of this order.

(M.S. SONAK, J.)