

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

**APPEAL FROM ORDER (ST) NO. 1758 OF 2018
WITH
CIVIL APPLICATION (ST) NO. 1759 OF 2018**

Chandrakant Sakharam Surve

... Appellant
(Orig. Plaintiff)

Versus

Tata Institute of Fundamental Research
and another

... Respondents
(Orig. Defendants)

.....

Mr. V. Y. Sanglikar i/b Sarwankar & Co. for the Appellant
Mr. S.R. Rajguru a/w A. R. Gole for Respondent No.1.

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CORAM : MRS. MRIDULA BHATKAR, J.

DATE : 19th JANUARY, 2018.

P.C.

1. The appellant is before this Court against the order dated 16th January, 2018 thereby rejecting the ad-interim relief in Notice of Motion in S.C. Suit No. 2804 of 2017 for injunction against the respondent No.1 that the appellant shall not be evicted from the suit premises and also an injunction is prayed that the respondent No.1 shall not deduct any amount towards the market rent or otherwise from the monthly salary of the appellant as

communicated by the letters dated 06/09/2017 and 18/10/2017. The appellant-plaintiff is an employee of respondent No.1-defendant No.1-institute and is occupying a service quarter i.e. Flat No. 34A in Alexander Terrace building at Byculla (East), Mumbai. As per the case of the defendant No.1- institute the said building is 100 years old and it requires repair. The flat also requires repair and therefore they have asked the plaintiff-appellant to vacate the suit premises. He is not willing to vacate the suit premises and shift elsewhere due to his health problems. The defendant No.1 - institute therefore has demanded rent at market rate of the suit premises. Therefore, the appellant has filed a suit for injunction. The Trial Court has refused to grant the interim relief.

2. Learned Counsel for the appellant submits that the case of the appellant is to be considered on humanitarian ground. The appellant being 57 years old and working in the institute since last more than 25 years. He is ready to shift in another flat of the same building till his flat is repaired or he is ready to shift in any other service quarter, which can be offered by the defendant No.1- institute. He submits that it is not possible for the

appellant-plaintiff to transfer as his wife is taking treatment in the hospital and he himself is unable to transfer her to any other place. Learned Counsel submits that the defendant No.1-institute is not in a position to tell the exact period within which the suit flat will be repaired.

3. Learned Counsel for the defendant No.1-institute submits that the defendant No.1-institute has been requesting the appellant-plaintiff since 2016 to vacate the flat and unless that flat is vacated, it is not possible for the defendant No.1-institute to repair the building, which is 100 years old. It is further submitted that the defendants have made demand of rent at market rate as the appellant is occupying the said flat without permission.

4. Heard the submissions. The building is old and it needs to be repaired. Under the circumstances the appellant should not continue to stay in the said flat. I am informed that the appellant is going to retire in 2021. Under the circumstances, I am of the view that the following order will make the ends of justice.

- (a) The appellant-plaintiff shall vacate the suit flat on or before 31st March, 2018.

- (b) The defendant No.1-institute shall endeavor to complete the repairs of the suit flat as expeditiously as possible.
 - (c) The defendant No.1-institute after repairs of the suit flat shall offer the plaintiff the said flat on a priority basis.
5. Appeal From Order is accordingly disposed of.
6. In view of disposal of Appeal From Order, pending Civil Application also stands disposed of.

(MRS. MRIDULA BHATKAR, J.)