

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.222 OF 2018
ALONG WITH
CIVIL APPLICATION NO.296 OF 2018

Hayatunnisa Noor Islam Shaikh Appellant-Applicant
V/s.
Maharashtra Housing and Area
Development Authority, Mumbai and Ors. Respondents

Mr. Amit S. Kapse for the Appellant-Applicant.

Ms. Neha Bhide for Respondent Nos.1 to 3-MHADA.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 21ST AUGUST, 2018.

P.C. :

1. Heard Mr. Kapse, learned counsel for the Appellant-Applicant, and Ms. Bhide, learned counsel for Respondent Nos.1 to 3-MHADA.
2. The Appellant-Original Plaintiff, whose Notice of Motion No.1912 of 2017 filed in S.C. Suit (Stamp) No.5507 of 2017 is dismissed by the City Civil Court, Mumbai, vide its order dated 20th February 2018, has approached this Court by way of this Appeal.
3. It is the contention of the Appellant that, he has taken out this

Notice of Motion challenging the notice dated 17th May 2017 issued by Respondent No.2 in respect of Room No.705, situate at S.M. Road, New Transit Camp, Rajeev Gandhi Nagar, Wadala. He is in possession thereof since last 30 years. He is also having a photo-pass issued in his name by the 'Slum Rehabilitation Authority' on 4th March 1997. He is also having the Ration Card on the said address and in such situation, the notice for eviction issued against him is illegal, null and void.

4. This Notice of Motion was resisted by Respondent Nos.1 to 3 contending *inter alia* that, the Appellant is a rank tress-passer and encroacher. Appellant is not having any document authorizing him to remain in possession of the suit premises and, therefore, the notice issued is legal and valid.

5. The Trial Court, after considering the submissions advanced at bar by learned counsel for both the parties, was pleased to hold that, except for the photo-pass, of which legality and validity is not even prima facie proved, Appellant is not having any other document on record to prove that his possession in the suit premises is authorized and, therefore, rejected his Notice of Motion.

6. While challenging this order of the Trial Court, the submission of learned counsel for the Appellant is that, in the face of the photo-pass,

which Appellant has produced on record, it was not proper on the part of the Trial Court to deny him the interim protection. In this respect, learned counsel for the Appellant has drawn attention of this Court to the letter dated 10th November 2017, in which date of the 'photo-pass' is wrongly written as "4th March 1990" and hence, it was held that, as the 'Slum Rehabilitation Authority' came to be established on 16th December 1995, such 'photo-pass' issued on 4th March 1990, cannot be called as legal and valid and it is not issued by the Slum Rehabilitation Authority.

7. The submission of learned counsel for the Appellant is that, his 'photo-pass' is bearing the date "4th March 1997" and not "4th March 1990"; therefore, on the basis of the letter dated 10th November 1997 issued by the Slum Rehabilitation Authority, the validity of his 'photo-pass' cannot be challenged. However, in this respect, the Trial Court has, in paragraph No.6 of its order, also considered the other relevant aspect as to the Application No.0132332 and Application No.0093208 and found that, the said 'photo-pass' cannot be called as issued in respect of the suit property. Hence, on this count also, its legality and validity is also not proved.

8. The Trial Court has also considered the fact that the Appellant is not having any allotment or possession letter issued by Respondent Nos.1 to 3 to prove that, his possession is authorized and legal. In such

situation, if the Trial Court has rejected his Notice of Motion, no interference is warranted in the said order.

9. The Appeal, along with Civil Application therein, therefore, stands dismissed.

10. At this stage, learned counsel for the Appellant requests for extension of the stay. Learned counsel for Respondent Nos.1 to 3 strongly resists the said request and in my considered opinion also, no case is made out for extension of the stay. The request for stay is, therefore, rejected.

[DR. SHALINI PHANSALKAR-JOSHI, J.]