

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.2010 OF 2018
IN
FIRST APPEAL NO.1090 OF 2011

Saifee Burhani Upliftment Trust, Mumbai, through its Trustees	 Applicants
<i>In the matter between</i>	
Taiyabbhai Embrahim Dhorajiwala	 Appellant
<i>V/s.</i>	
Fizza Musaji Lakdawala	 Respondent

Mr. Vineet Naik, Senior Counsel, a/w. Sumant Anchan and Ms. Rati Lodha, I/by M/s. Lodha Legal, for the Applicant-Trust.

Mr. A.S. Uraize for Respondent No.1-Original Appellant.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 4TH OCTOBER, 2018.

P.C. :

1. Heard learned counsel for the Applicant-Intervenor, learned counsel for the Respondent-Original Plaintiff and the Appellant-Original Defendant, who is present in person.

2. This Civil Application is filed by the Applicant-Trust for intervention and for seeking modification of the order of status-quo passed by this Court and also for appointment of the 'Court Receiver'.

3. The Applicants are the Trustees of 'Saifee Burhani Upliftment Trust', which is a 'Public Charitable Trust', created under the 'Deed of

Trust', dated 23rd January 2009 and duly registered under the provisions of the Bombay Public Trust Act, 1950. The object of the Trust is upliftment of the lives of more than 25,000 residents of the Bhendi Bazar area, admeasuring approximately 16.5 acres and bearing 280 separate cadastral survey numbers.

4. The present Appeal is preferred by the Appellant challenging the 'Judgment and Order' dated 6th April 2011 passed by the City Civil Court, Mumbai, thereby decreeing the Suit in favour of the Respondent-Plaintiff and restraining the Appellant from dispossessing the Respondent from the suit premises, which is Room No.8 in Kholawala Building, 3rd Floor, Chor Bazar, Mumbai. The Applicant-Trust is the owner of the land and the building known as 'Kholawala Building', in which the suit premises are situate.

5. Admittedly, the Applicant-Trust and the Trustees thereof, were not the parties to the said Suit; however, as the suit building had become very old and extremely dilapidated and in dangerous condition and is also situate within the congested area, the Applicant-Trust has submitted a detail proposal for its re-development to the Government of Maharashtra on 7th March 2011. It was approved by the Government of Maharashtra on 22nd July 2011, following which the Municipal Corporation of Greater Bombay has granted the 'Letter of Intent', dated 10th August 2011 to the Applicant-Trust, giving necessary permission for

implementing the 'Re-development Project' on the terms and conditions set out therein. In view thereof, now the Applicant-Trust intends to demolish the existing building, in which the suit premises are situate and to re-develop the same.

6. However, in view of the order of status-quo passed in this Appeal, the Applicant-Trust is facing difficulty in demolition of the suit building and at the same time, in carrying out re-development of the suit building. In view thereof, the Applicant-Trust has filed this Civil Application for its impleadment and for modification of the status-quo order.

7. This Civil Application is resisted by both the Appellant as well as Respondent contending, *inter alia*, that, the Applicant-Trust was not the party to the Suit before the Trial Court and, secondly, it is also not a necessary or proper party to the Suit, as it is having no concern with the dispute between the Appellant and the Respondent.

8. Learned counsel for the Appellant has relied upon the Judgment of this Court in the case of M/s. Gholechha Housing and Infrastructure Pvt. Ltd. Vs. Shri Sanjay s/o. Mohan Rao, *2018 (4) ALL MR 689*, to submit that, unless and until the presence of the Applicant is required for effectually and completely adjudicating upon the dispute involved in the Suit, such person cannot be made party, especially, to the Appeal, when

the Trial Court has decided the Suit without the presence of the Applicant. Hence, Applicant cannot contend that the Applicant is a necessary party to the Suit.

9. It is true that, normally, the third party intervention cannot be allowed, unless it is found necessary for deciding the dispute between the parties. Here in the case, strictly speaking, for decision of the Appeal, the presence of the Applicant may not be necessary, but considering the facts stated above, at-least, for deciding this Civil Application and for modifying the order of status-quo passed in the present Appeal, the presence of the Applicant-Trust is necessary and it is sought only for that limited purpose.

10. If the above-said facts are taken into consideration, it is clear that, the Applicant-Trust, being the owner, is interested in re-developing the land below the suit structure. As pointed out above, its proposal for re-development is already approved and it has also obtained necessary permissions and 'Letter of Intent' for the same. It is a matter of record and it is also not disputed that, the entire suit building is, at present, not occupied and not a single person is residing therein on account of its condition being dilapidated and dangerous.

11. The record of this Court also shows that, there are two orders passed by this Court; one dated 7th June 2007, in which it was clearly

stated that, the suit premises are locked, thereby indicating that no one is in possession thereof. Then there is another order dated 15th November 2011, in which also it is categorically recorded that, during the pendency of the Suit, the subject 'Room' was in locked condition and in case the Appeal is not decided within near future, the parties are at liberty to make appropriate application for appointment of the 'Court Receiver'.

12. Thus, as on today, no one is in possession of the suit premises, it being in locked condition. Therefore, there is no question of either the Respondent-Plaintiff or Appellant-Defendant being dispossessed at this stage from the suit premises, if the order of status-quo is modified, so as to enable the Applicant-Trust to carry out re-development of the suit property.

13. Needless to state that, the rights of both the Appellant and Respondent will remain as it is and they will not be affected and they will be subject to the outcome of the Appeal. Whosoever may succeed in the Appeal, he will get the premises in the re-developed property. Hence, there is no question of any prejudice being caused to them. However, if the order of status-quo is not modified, the Applicant-Trust, who had already obtained all the requisite permissions and approval for re-development and it is time-bound, Applicant-Trust will suffer irreparable

loss and hardship. In view thereof, as no prejudice is likely to be caused to the Appellant and Respondent, this Civil Application needs to be allowed.

14. Accordingly, the Appellant to carry out necessary amendment in the Appeal Memo to implead the Applicant-Trust as party-Respondent in the Appeal.

15. The orders dated 10th June 2011 and 15th November 2011 passed in Civil Application No.2035 of 2011, directing the parties to maintain status-quo in respect of the suit premises, are modified to the extent that, the Applicant-Trust is permitted to demolish the suit building and, consequently, to re-develop the same as per the 'Letter of Intent', dated 10th August 2011.

16. The 'Court Receiver', High Court, Bombay, is directed to take possession of the suit premises and handover the same to the Applicant-Trust.

17. After re-development of the suit premises, the 'Court Receiver' will handover possession thereof to the Appellant or Respondent, who will be held entitled to get such possession.

18. During the period of re-development, the Applicant-Trust to deposit the rent, at the rate on which the other tenants are being paid, with the 'Court Receiver' and the said arrangement will be subject to the outcome of the Appeal.

19. The 'Court Receiver' to take possession of the suit premises within a period of four weeks from today.

20. Hearing of the Appeal is expedited.

21. Civil Application is disposed off in the above terms.

[DR. SHALINI PHANSALKAR-JOSHI, J.]