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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER No. 589 OF 2017
WITH
CIVIL APPLICATION No. 684 OF 2017

Rajshree Ramesh Bare	...	Appellant
Vs.		
Surekha Amol Kamble & Ors.	...	Respondents

Mrs. Anita Borkar, for the Appellant.

Mr. Joel Nohn Carlos, for the Respondent Nos. 1 & 3.

Mrs. M. R. Bhoir, for Respondent No. 2 – MCGM.

CORAM : V. M. DESHPANDE, J.

DATE : JUNE 28, 2018

ORAL JUDGMENT :-

1. Heard. Admit. Taken up for final hearing since the appeal can be disposed of at the admission stage itself.
2. Heard the learned counsel for the Appellant and the learned counsel appearing for the Respondent Nos. 1 & 3 and the Respondent No. 2 Corporation. The cause for approaching the Appellant, who is a helpless lady before the court is non-grant of certain reliefs in her favour by the learned Ad-hoc Judge

of the City Civil Court, though he has granted relief in terms of prayer clause (c) of her Notice of Motion No. 4303 of 2013.

3. According to the Appellant, who is the original plaintiff, her deceased husband was the tenant in respect of Room N. 5, which is also called as Room No. 8 in House No. D-70, Gajanan Nivas, Puravnagar, Chembur Gaothan, Chembur, Mumbai. During the life time of Appellant's husband, Respondent No. 1 became owner of the said house. This position is not disputed by Respondent No. 1, and Respondent No. 1 submitted a proposal for redevelopment of the said house alongwith the other lands bearing CTS Nos. 1153, 1153/1 to 1153/4, 1154/1 to 1154/6 of village Chembur, Taluka Kurla, Mumbai Suburban district. Even this fact is also undisputed.

4. According to the plaintiff, her husband, in view of the development activities, handed over vacant possession of the tenanted premises on the assurance given by Respondent No. 1 that a residential block in the building, which is to be constructed over the suit property, will be handed over. It is not

in dispute that the developer got the vacant possession. What is disputed by the developer is that originally the tenancy was in the name of one Laxman, who was having 2 sons, namely Manohar and husband of the appellant and after demise of Laxman, his 2 sons were joint tenants.

5. It is also the case of the plaintiff that at the time of handing over of the possession to the Respondent No. 1, a document known and styled as “Hami-patra” was executed and by that document, Respondent No. 1 / Developer agreed to pay Rs. 5,000/- per month by way of rent in order to avail the alternate accommodation till the building is constructed. It is not in dispute that the building is ready. Learned counsel for Respondent No. 1 submits that the developer is ready to pay the rent and also to hand over the possession. However, according to him, he is refrained in view of dispute between the present Appellant and Laxman's another son Manohar. Learned Judge of the court below has passed the order dated 8.6.2017 by which the learned Judge has granted relief in terms of prayer clause (c)

of the notice of motion in favour of the Appellant. The said prayer reads as under:

“(c) that pending the hearing and final disposal of the suit, this Hon'ble Court be pleased to restrain the Defendant No.1 and 3 from selling, disposing of or creating third party rights in respect of any one premises with minimum carpet area of 296 sq. ft. having two rooms and a kitchen with toilet and bathroom inside the premises, in the new building with lift, constructed on the land bearing CTS no.1153, 1153/1 to 1153/4, 1154/1 to 1154/6 of village Chembur, Taluka Kurla, Mumbai Suburban District.”

6. Though Respondent Nos. 1 and 3 suffered, the impugned order, this order is not challenged by filing any appeal before this Court. Thus, the order passed against Respondent Nos. 1 and 3 by the learned Judge of the court below has attained its finality.

7. It is to be noted that while granting prayer clause (c) in favour of the Appellant, the learned Judge has also made certain observations and has recorded some findings. Even those findings are also not challenged by Respondent Nos. 1 and 3, though it was open for them to challenge those findings. In the

impugned order, the learned Judge has specifically recorded the finding that the plaintiff has proved the prima-facie case in her favour. Not only that, the learned Judge of the court below has recorded a specific finding which overturns submission of the learned counsel for Respondent Nos. 1 and 3, which were made before the said Court that original tenant was Mr. Laxman.

8. In paragraph 6 of the impugned order, the learned Judge has specifically recorded a finding that on perusal of the defendants' documents, nowhere it is seen that such alternate accommodation came to be provided. Not only that, there is a further finding of the court below that though the defendants' claim that the tenancy between deceased husband of the Appellant and Manohar is the same, however, there is no document on record filed by the defendants to buttress their claim. Accordingly, the learned Judge has in clear terms recorded finding that it is the husband of the plaintiff, who has handed over possession to the developer and the developer has assured to provide permanent alternate accommodation on

ownership basis. In that view of the matter, when it is an admitted position that the amount of rent is not paid to this appellant lady, it was incumbent on the part of the learned Judge to give direction to the Respondent Nos. 1 and 3 to pay the agreed amount alongwith the accumulated rent. In that view of the matter, I pass following order:

- (i) The order dated 8th June, 2017 granting prayer clause (c) of Notice of Motion No. 4303 of 2013 by the learned court below is hereby confirmed;
- (ii) Respondent Nos. 1 and 3 are directed to pay agreement amount of Rs. 5,000/- per month by way of rent, which is outstanding from January, 2011, within a period of one month from today;
- (iii) Respondent Nos. 1 and 3 shall continue to pay the said amount till the Appellant is placed in possession of the block which is constructed in the building by Respondent Nos. 1 and 3;
- (iv) Appeal is partly allowed and is disposed of in the

aforesaid terms. Needless to state that pending civil applications filed in the appeal are also disposed of.

Sd/-
[V. M. DESHPANDE, J.]

Vinayak Halemath