

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER St No. 19685 of 2018
WITH
CIVIL APPLICATION St No. 22290 of 2018
IN
APPEAL FROM ORDER St No. 19685 of 2018

Ram Shreshtha ..Appellant.
Vs
New Akash Ganga CHS Ltd & Ors ..Respondents.

Mr. Hoshang S. Tafti for the Appellant.
Mr. Advait Sethna for the Respondents.

CORAM : M.S. SONAK, J.
DATE : 13th August, 2018.

P.C.:-

- 1) Heard Mr. Tafti, learned Counsel for the appellant and Mr Sethna, learned Counsel for the respondent.
- 2) The challenge in this appeal is to the impugned order dated 11th June, 2018, the operative part of which reads as follows :-

1. The notice of motion no. 724 of 2017 is made absolute in terms of prayer clause (I),

2. The defendant no.3 is directed to hand over a duplicate set of keys to the Chairman/Secretary/Treasurer of the plaintiff society on or before 15.6.2018, for using the same in case of fire or any other emergency for safe escape only.

3. The defendant no.3 is absent and therefore the plaintiff is directed to intimate this order to the defendant no.3 and his advocate and report compliance of the order on or before next date.

4. An ordinary copy of this order duly authenticated by the Sheristedar of this Court be supplied to the respective parties.

5. Hearing of the suit is expedited and be completed positively before 31.12.2018.

3) Mr Tafti, learned counsel for the appellant submits that the appellant has been residing in the suit premises since the year 1982. He submits that for all these reasons there was no issue raised as regards the appellant encroaching upon any alleged fire exit or passage meant to be used as fire exit. He points out that if the impugned order is to be complied with, the appellant's continuance in the suit premises will not be rendered safe. He points out that the office-bearers of the society, on the basis of duplicate key may remove the appellant's possession and other household items and thereafter allege that it is the appellant who has been himself voluntarily removed himself from the suit premises. Mr. Tafti also expressed his apprehension that the members of the society may plan narcotics or even a bomb in the suit premises only in order to prejudice the appellant.

4) From the perusal of the impugned order, it appears that the Trial Court has only taken a prima facie view that the passage in question is a fire exit. The impugned order does not in any manner disrupt or affect the possession of the appellant in the suit premises. The direction is only to handover the duplicate set of keys to either the Chairman/Secretary or the Treasurer, which can be used in case of emergency and for the purposes of safe escape only. From the order, it is clear that the members of the Society or the office-bearers of the society are not using this duplicate set of keys for any other purposes. Thus, construing the apprehension now expressed by Mr. Tafti had been taken care of by the impugned order itself. In any case, it is made clear that the use of duplicate set of keys can be only in emergent situation as indicated in the impugned order itself and not for any other purposes.

5) Mr. Sethna, learned Counsel for the respondents states that the keys can be handed over to Dr. Shri Dinesh Daphatari who is the Chairperson of the society. Accordingly, in compliance of the impugned order, the appellant to handover the key to Shri Dr. Daphatari, within a period of two weeks from today, who shall issue an appropriate receipt in respect of such key. Dr.Shri Daphatari shall

himself retain such key and accordingly, shall be responsible for not only maintaining the key with himself but also he shall ensure that key is not utilized for any purpose not authorized by the impugned order. This will be sufficient protection to the appellant as well.

6) With the aforesaid modification, the impugned order is not interfered with. The appeal is disposed of in the aforesaid terms.

7) It is made clear that observations made in the aforesaid order are only prima facie and therefore the learned Trial Judge need not be influenced by such observations at the stage of deciding main suit on merits. All contentions of the parties are kept open.

8) The pending civil application is accordingly disposed of.

9) All the concerned to act upon an authenticated copy of this order.

(M.S. SONAK, J.)