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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION (L) NO. 641 OF 2018

IN

SUIT (L) NO. 364 OF 2018

Shabbirbhai Morbiwala & Ors	…Applicants
In the matter between	
Shabbirbhai Morbiwala & Ors	…Plaintiffs
Versus	
Huseina Jaffarbhai Dorajiwalla	…Defendant
And	
Maharashtra Housing & Area Development Authority	…Respondent

Mr Viraag Tulzapurkar, Senior Advocate, *with Sowmya S, Ms Rati Lodha & Ms U Misquitta, i/b Lodha Legal, for the Applicants/Plaintiffs.*
Mr AS Khandeparkar*, i/b P Sharma, for the Defendant.*

CORAM: G.S. PATEL, J
DATED: 4th April 2018

PC:-

1. The dispute is in respect of an immovable property of about 236 sq mtrs at Husseina Marg, formerly known as Pakmodia Street in Mumbai along with a ground plus five floor building standing on it, known as 'Sugra Manzil'. The Plaintiffs are the trustees of the

Saifee Burhani Upliftment Trust ("**SBUT**"). They own a 71.40% undivided share, right, title and interest in this property. The Defendant has the remaining 28.60%.

2. The property, like so many others in that area, is not only tenanted but is in a structurally dangerous and dilapidated condition. There is no real controversy about this state of affairs or the fact that the building requires redevelopment. SBUT has been charged with a cluster redevelopment project and is taking up reconstruction of several such damaged buildings in the Bhendi Bazar area of Mumbai. This is one such, the difference perhaps being that here SBUT is a partial owner of the property and not a 100% owner. This joint ownership necessarily has implications on both sides. Each must pro-rata bear the taxes and outgoings due. More importantly, as Mr Tulzapurkar on behalf of the Plaintiffs, points out that where tenants found eligible, duly certified or approved by the regulatory authority, MHADA, are entitled to re-accommodation, the costs of moving those tenants/occupants out of the existing structure, temporarily accommodating them in some other place, or paying transit rent, and then shifting them back to a reconstructed building or, alternatively, offering permanent alternative accommodation are all costs that would also have to be jointly borne by the parties in proportion to their respective shares.

3. There is no real dispute about this and indeed Mr Khandeparkar on behalf of the Defendant does not dispute that the costs for all of this and all costs of reconstruction will initially have to be borne by the Plaintiff. The Defendant does not have the immediate wherewithal to make these payments in such large amounts. Of necessity, this means that the Plaintiff will keep an account of all such expenses and these amounts will have to be adjusted against or deducted from any future sale price that the Plaintiffs pay to the Defendant to acquire her undivided share, right, title and interest in the building.

4. Parties are agreed that there may be an order in terms of prayer clauses (c) and (d) which read as follows:

> (c) that, pending the hearing and final disposal of the present suit, the Defendant, acting herself and/or through her servants, agents or representative, be restrained by an order and injunction of this Hon'ble Court from obstructing and/or impeding and/or interfering with and/or in any manner hampering the Plaintiffs' efforts/steps to vacate all the tenants/occupants of the said Building (Sugra Manzil) and in demolition of the said Building;
>
> (d) that, pending and hearing the final disposal of the present suit, the Defendant be ordered and directed by a mandatory order and injunction of this Hon'ble Court to take such steps and/or join the Plaintiffs in taking such steps as may be required forthwith to vacate the tenants/occupants of the said Building (Sugra Manzil) forthwith;

5. As far as prayer clause (e) is concerned and the direction to MHADA, the Plaintiffs are at liberty to apply in regard to the notice of 24th January 2018 and the further steps needed by MHADA in that behalf.

6. This leaves the question of prayer clause (b) and whether there should be a restraint, as Mr Tulzapurkar suggests, against the Defendant from parting with possession, selling, alienating, transferring, assigning, disposing of, dealing with or encumbering her fractional 28.60% undivided share, right, title and interest in the property or creating any third party rights in it. Mr Khandeparkar is perhaps correct in saying that the prayer is extremely widely worded. and such a restraint is impermissible because it is always possible for a co-owner to sell his or her fractional interest. At best, the other owner may have a right of pre-emption, but this would not justify the grant of such an injunction. Mr Tulzapurkar's submission, as I understand it, is only that redevelopment is likely to be adversely affected if the Defendant's fractional holding either passes to a third party or is further fragmented. This will make redevelopment virtually impossible of the building itself and might well have an adverse impact on the entire cluster redevelopment project as a whole.

7. I believe it is sufficient to accept, as an interim order in the suit, Mr Khandeparkar's suggestion that, should the Defendant proposed to dispose of her 28.60% right, title and interest in the property or any part of it, she will give notice to the Plaintiffs stating clearly the proposal that she is contemplating and give the Plaintiffs a first option or first refusal in that regard. I believe this is more than sufficient because the Plaintiffs will have adequate advance notice of any such intended disposal by the Defendant of her fractional holding in the property.

8. The Notice of Motion is disposed of in these terms with liberty to the parties to apply.

9. Parties are agreed that the Plaintiffs may proceed to take possession from tenants for the purpose of demolition. It is, however, clarified that as regards the relationship of landlord and tenant this order is entirely without prejudice to the respective rights and contentions of the parties.

(G. S. PATEL, J)