

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

COMMERCIAL APPEAL (ST) NO. 544 OF 2018

IN

NOTICE OF MOTION NO. 2018 OF 2018

IN

NOTICE OF MOTION NO. 1509 OF 2015

IN

SUIT NO. 756 OF 2015

WITH

NOTICE OF MOTION NO. 1301 OF 2018

Ashok J. Thakker

... Appellant

Versus

MIG (Bandra) Realtors and Builders Pvt. Ltd.

And Ors.

... Respondents

Mr.C.G. Gavnekar I/by Suhas S. Deokar for the appellant.

Adv Rujuta Patil I/by Negandhi, Shah & Himayatullah for R. No.1.

Smt. Archita Thaker, respondent no. 3/Orig. Defendant no. 9.

**CORAM : B.P. DHARMADHIKAKRI &
SARANG V. KOTWAL, JJ.**

DATE : DECEMBER 12, 2018

P.C.:

The appeal is filed by original defendant no. 3 assailing the order of learned Single Judge (Commercial Court) dated 22/11/2018 in Notice of Motion No. 2018 of 2018 in Suit No. 756 of 2015.

2. The suit is filed by the builder against the society and its occupants for certain reliefs including damages due to obstacles in -redevelopment and therefore, it has been classified as a commercial case. However, what is impugned in Notice of Motion No.2018 of 2018 is domestic dispute between defendant no. 3 (father in law) and defendant no. 9 (daughter in law).

3. The contention of the appellant/defendant no.3 before this court is that in the motion moved by him prevailing situation could not have been turned to his prejudice as there was no motion by defendant no. 9, as per law, before the learned Single Judge, to continue payment of temporary/rental compensation to her after 8/12/2018. The eligibility or entitlement of defendant no. 9 to receive it, till then, is not in dispute.

4. Because of adjudication dated 5/9/2015 by the Sessions Court in Appeal preferred under section 29 of the Protection of Women From Domestic Violence Act, 2005 holding that the Flat No. B5/40 i.e. accommodation claimed by defendant no. 9 is not shared accommodation, the motion was taken out with prayers that after the said findings, defendant no. 9 ceases to be entitled to receive such compensation.

5. Learned Single Judge has considered the motion and found

on 28/11/2018 that the original plaintiff had sent two emails to defendant no.9 offering compensation for 12 months and subsequently offering compensation for six months. The statement made by the learned counsel for the plaintiff that period of handing over possession of permanent accommodation to defendant no. 9 would be more than 12 months is also taken note of and grievance of defendant no. 9 that she would be required to come again and again before the Civil Judge for seeking compensation from the developer is also taken note of.

6. By earlier order dated 22/11/2018 the learned Single Judge directed the plaintiff/developer to pay compensation to defendant no. 9 for the period of six months from date 7/12/2018 and by subsequent order dated 28/11/2018, the learned Single Judge directed the plaintiff to pay the compensation to defendant no.9 in accordance with the earlier agreement arrived at between the developer and society for the period of 12 months from 7/12/2018 and made it clear that the additional compensation if payable to defendant no. 9 would also be paid for the said period. Plaintiff then pointed out to learned Single Judge that the payment of compensation for the first period of six months was in progress and the amount shall be released to defendant no.9 shortly. In so

far as next period of six months is concerned, it was submitted by the plaintiff before the learned Single Judge that he would follow the fresh process and pay which would be completed within three weeks. Learned Single Judge has accepted that statement. It is further observed that after negotiations between the society and the plaintiff are over and any additional amount becomes payable to defendant no. 9, the same would be payable to defendant no. 9. Subject to this, other directions contained in the order dated 22/11/2018 were continued.

7. The order dated 22/11/2018 takes a note of the contention of defendant no. 9 that she was apprehending dispossession and that compensation for the period beyond 7/12/2018 was paid to her. Plaintiff then made a statement that the negotiations for payment of compensation with the society was going on and he sought modification of existing arrangement. This court therefore, had observed that defendant no. 9 shall not be dispossessed by any of the parties to the suit.

8. In so far as judgment delivered by the Sessions Court is concerned, defendant no. 9 has already questioned it before this court and that challenge is pending. The appeal was against an interim order in Domestic Violence case.

9. It appears that the matter had earlier gone upto Hon'ble Apex court where the Hon'ble Apex Court has in SLP (Criminal) No. 7247 of 2016 refused to entertain the SLP filed by the husband of defendant no. 9. But then, it impressed upon the trial court need to conclude and decide the proceedings before it finally at an early date.

10. The judgment of the Sessions Court in Criminal Appeal No. 283 of 2014 is dated 5/9/2015 and it could not look into the direction issued by the Hon'ble Apex Court. Similarly other orders passed by the learned Single Judge of this court also get eclipsed by this direction of Hon'ble Apex Court. Learned Magistrate has in Domestic Violence proceedings found defendant no. 9 to be in possession of the household. That finding is upset on 5/9/2015 by the Sessions Court in Suit no. 758 of 2015. Earlier on 6/8/2015, this court has in paragraph 4 dealt with the dispute in relation to the flat No. B5/40 and taken a note of the order of Magistrate dated 26/2/2014 which permits son of defendant no. 3 to reside in the flat and directs him to provide alternate accommodation to defendant no. 9 and her minor daughter. Till then, third defendant appellant before us and his son has been restrained from dispossessing the 9th defendant and her minor

daughter. Vide paragraph (d) compensation for temporary alternate accommodation is found payable to 9th defendant. This order has been clarified on 10/8/2015 and the learned Single Judge has clarified that it was not possible to throw the 9th defendant and her minor daughter on the street or to leave them without a roof over their heads. The third defendant and his son were given opportunity to obtain suitable orders from the court before whom the matrimonial and criminal proceedings are pending. It is also observed that if in those proceedings, third defendant and his son made an adequate provision for the 9th defendant and her minor daughter, the 3rd defendant was at liberty to so apply.

11. The notice of motion in which impugned order has been passed, is taken out on the basis of the judgment dated 5/9/2015 with a prayer to discontinue the payment to defendant no.9.

12. In this situation, when the Hon'ble Apex Court has on 2/2/2018 already found it necessary to expedite the proceedings before the learned Magistrate, we find that the challenge to the impugned order passed by the learned Single Judge on technical ground is unsustainable. Learned Single Judge has while passing the orders dated 22/11/2018 and 28/11/2018 considered the material on record and thereafter proceeded to pass the impugned

orders. We find that the Apex Court has already found it necessary to expedite the trial before the Magistrate and declined to change the interim arrangement.

13. Defendant no. 9 points out that her daughter is appearing currently for 10th standard examination.

14. In these circumstances, we direct the learned Magistrate to complete the proceedings under Domestic Violence Act pending before it as early as possible and in any case within a period of one year from 01st January. 2019.

15. With directions, we dismiss the present appeal.

16. Consequently Notice of Motion (L) No.1301 of 2018 also stands disposed of.

(SARANG V. KOTWAL, J.) (B.P. DHARMADHIKARI, J.)