

**FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.682/2013
IN
FIRST APPEAL NO.1099/2013**

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
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Advocate Mr. Ramesh D. Kamble for appellant.
Advocate Mrs. Sheetal Mane for respondent nos.1 and 2.
Advocate Mr. S.K. Chourasia for respondent no.3.

**CORAM : K. K. TATED, J
DATE : JULY 8, 2019.**

P.C.:

Heard learned counsel for parties.

2. By this civil application, applicant/ original plaintiffs are seeking stay of operation and implementation of judgment and award dated 21.01.2013 passed by Bombay City Civil Court, Bombay in L.C.Suit no.830/2010, dismissing their suit for injunction. For the sake of convenience,

all parties will be referred as stated in the copy of plaint in L.C. Suit 830.2010.

3. Applicant/original plaintiffs filed L.C.suit no.830/2010 against respondent/defendants for declaration that they have no right, title, interest to remove the plaintiffs from the suit premises occupied by them i.e. plot no.8. Scheme No.56, Kumbharwada, Dharavi, Mumbai and also for other reliefs. The prayers in the suit reads thus;

“(a)It may be declared by this Hon'ble Court that the defendants have no right, power or authority to take any action for removal of the plaintiffs from the suit premises occupied by them i.e. First Wadi, plot no.8, Scheme No.56, 90 feet road, Kumbharwada, Dharavi, Mumbai 400 017 without providing them alternate accommodation as required under DC Rules (33) vide Notification of 2004 and as observed vide Order dated 25.5.2009 of the High Power Committee in Appeal No.130/2008 and as per the decision taken thereat.

(b) That it may be declared by this Hon'ble

Court that the impugned order dated 17.2.2010 passed by the defendant no.2, bearing No.ACGN/ESR/257/ADE is malafide, illegal, bad in law and is not binding on the plaintiffs.

(c) That pending the hearing and final disposal of this suit, this Hon'ble Court may be pleased to permanently restrain the defendants, their officers/servants and agents and/or any person or persons claiming through them from enforcing and/or implementing the impugned order dated 17.2.2010 bearing No.ACGN/ESR/257/AOE in respect of the structures of the plaintiffs situate on First wadi, plot no.8, Scheme no.56, 90 feet road, Kumbharwada, Dharavi, Mumbai 400 017 and/or from cutting off the electric supply and/or water supply to the suit premises without providing alternate accommodation to the plaintiffs.

d) That the Court Commissioner be appointed to visit the suit premises of the plaintiffs and to submit a detailed report about the existence of the structures of the plaintiffs.

e)For interim and ad-interim orders in terms of prayers (c) and (d) above.

f)For cost of this suit.

g) For such further and other reliefs in the facts and circumstances of the case may require also be granted.”

4 After hearing both the sides, the trial court dismissed plaintiff's suit. Hence, plaintiffs filed first appeal and civil application for stay of impugned judgment and decree passed by the trial court.

5 Learned counsel for applicant submits that they are in possession of the suit premises for last several years. He submits that in the interest of justice, this Court be pleased to stay the operation and implementation of impugned judgment and decree and restrain the respondents from dispossessing them from suit premises. If stay is not granted, irreparable loss would be caused to them. He submits that they have good chance of success.

6 On the other hand, learned counsel for defendant no.3 vehemently opposed the present civil application. He submits that as on today, out of 8 tenements, four already have created third party right. They are not in possession. In the present proceeding, earlier plaintiffs filed Writ Petition No.461/2003 before this Court for protecting their possession.

Said writ petition was decided by this court by order dated 16.2.2004. Para 11, 12, 13, 14, and 15 and 16 reads thus;

“11. In the circumstances, the writ petition is liable to be rejected and is accordingly, rejected.

12. Mr.Shah, learned counsel for the petitioners, sought about one year time to vacate. Having regard to the length of occupation of the petitioners and the paucity of accommodation in the city, I consider it appropriate to grant the petitioners one year time to vacate on their, alongwith all adult members of the family residing in the premises in question, filing an usual undertaking in this Court within a period of two weeks from today. Till then, the petitioners shall not create any third party right in respect of the premises.

13. Mr.Shah, learned counsel for the petitioners, also sought liberty to apply for grant of tenancy rights in respect of the same premises to respondent no.1 Corporation. The petitioners are at liberty to do so and their application, if any may be considered by the Corporation on their own merits in accordance with law.

14. Writ petition is disposed of accordingly. Rule discharged.

15. No order as to costs.”

7 Learned advocate for defendant no.3 further submits that inspite of earlier order in Writ Petition No.461/2003, plaintiffs filed another writ petition no.1334/2006 to protect their possession. That petition was also dismissed by this

Court, by order dated 27.11.2006 (Coram: F.I.Relellow and Anoop Mohta,JJ). The said order reads thus;

“The petitioner’s claim for photopass was earlier rejected. The petitioner filed Writ Petition bearing No.461 of 2003 alongwith Writ Petition No.474 of 2003 which were disposed of by this court on 16th February 2004. In para 12 it is clearly held that the petitioner is not entitled for protection and was given one year to vacate subject to filing usual undertaking. Thereafter L.P.A. came to be filed which was withdrawn on 5th April 2005. The contention of the petitioner now is that thereafter the petitioner was given a photo pass which has been cancelled in the year 2005 by order dated 10th October 2006. The contention raised is that she was not given any hearing. The order dated 10th October 2006 would indicate that the photo-pass was obtained fraudulently by the petitioner. The order also indicates that the petitioner was given a hearing on 18th November 2005 in the office of the Deputy Municipal Commissioner. Apart from that, after the order of this Court dated 16th February 2004 the petitioner’s claim stands rejected.

Considering the above, petition dismissed.”

8 Learned advocate for defendant no.3 submits that instated of vacating the suit premises, the plaintiff moved before this Court by way of writ petition No.3390/2008. That was also dismissed by this court by order dated 29.5.2008 (Coram :S.C. Dharmadhikari & S.S. Shinde-, JJ) Said order reads thus,

"1. After this petition was argued for some time the learned Advocate appearing for the petitioner makes a statement that he has instructions from the Petitioners to withdraw the writ petition.

2. However, he requests that the Petitioner have been residing at Kumbharwada, 1st Wadi, 90 ft.road, Dharavi, Mumbai and they have documents in their possession to show that they would be eligible for alternate accommodation under the Welfare/beneficial scheme of the State Government which has been initiated as far as Dharavi is concerned. For the petitioners to approach these authorities some time be granted and they be protected until then. Mr. Bhor appearing for the BMC objects to this and has pointed out that the predecessor in title of the petitioner has been served with notice of eviction from this land. The appeal to the City Civil Court and Writ Petition to this Court have all failed. The petitioners have been induced by the said predecessor in title. They are therefore, not entitled to any benefits in any scheme much less the Slums Rehabilitation Scheme.

3.We do not wish to enter into this controversy as the petitioners are withdrawing the Writ Petition. Writ Petition allowed to be withdrawn with liberty to approach State Government or appropriate Authority for seeking benefits of any welfare/beneficial scheme. Dismissed as withdrawn. No costs."

9 Plaintiffs suppressed all these facts and moved before High Power Committee. In Appeal No.130/2008 the High Power Committee passed order dated 22.5.2009 and restrained the authority from evicting plaintiff from suit premises. Learned counsel for defendant no.3 submit that thereafter immediately they moved before High Power Committee and pointed out earlier orders passed by this Court. After hearing and considering earlier orders, the High Power Committee passed order dated 25.9.2009 and dismissed the appeal 130 of 2008. In view of these facts, there is no question of granting any interim relief in favour of plaintiff.

10. Learned counsel for the Corporation, also opposed the application preferred by plaintiff.

11 Considering the above mentioned facts, it is clear that though, this court passed several orders against plaintiff, but

they failed and neglected to vacate and hand over possession to defendant no.3. Not only that, High Power Committee also dismissed plaintiff's appeal. In view of these facts, I do not find any reason to grant any interim relief in favour of plaintiff.

12 Hence, following order.

a) Civil application preferred by plaintiff is dismissed.

b) Authorities are free to take appropriate action against plaintiffs.

c) No order as to cost.

d) At this stage, learned advocate Mr. Sutrale for applicant seeks stay of order. There is no question of granting stay in view of earlier several orders passed by this court. Hence, oral request is rejected.

(K.K.TATED, J.)