

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

CIVIL APPLICATION NO. 2217 OF 2019

IN

FIRST APPEAL NO. 929 OF 2019

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
	David Joseph with D.P. Chacha for the Applicants. Cherag Balsara with Raj Patel with Ishita Advani i/b Desai & Diwanji for Respondents.

**CORAM: K.K.TATED, J.
DATED : OCTOBER 15, 2019**

P.C.

- 1 Heard learned Counsel for the parties.

- 2 By this Civil Application the Applicants/ Original Defendants are seeking stay of the operation and implementation of the Judgment and decree dated 26/04/2019 passed by the Bombay City Civil Court, Bombay in Suit No. 9566/1993 directing the Appellants to handover the vacant and peaceful possession of the suit premises i.e. Block No. 4-B in Bai Alami Shapoorji Mistry Charitable Building belongs to Pallongi Shampoorji Charity Trust, Parel.

3. The Learned Counsel for the Applicants submits that as on today the Applicants along with their son and wife is in possession of the suit premises. He submits that, pending the hearing and final disposal of the First Appeal, this Hon'ble Court be pleased to stay the operation and implementation of the impugned Judgment and decree passed by the Tribunal. He submits that if the stay is not granted irreparable loss will cause to them.

4. On the other hand, the Learned Counsel for the Respondents vehemently opposed the present Civil Application. The Respondents filed affidavit in reply dated 23/08/2019. The Learned Counsel for the Respondents submits that in the present proceedings, the Applicants have another premises in the same building i.e. Block No. 12 B. He submits that the rent receipt in respect of the Block No. 12B is in the name of the Applicant No. 2 i.e. Arnavaz Rohinton Turel. Therefore, there is no question of granting any stay. He further submits that the suit premises is situated in prime locality of Parel area. He submits that as on today the suit premises will fetch sum of Rs. 12,415.50/- rent per month. In support of this

contention, the Learned Counsel for the Respondents placed on record the valuation report dated 26/07/2019 of Harshad S. Maniyar. He submits that, if this Court comes to the conclusion that, the Applicants are entitled for stay of the impugned Judgment and decree, in that case, this Court be directed to the Applicant to pay the sum of Rs. 12,415.50/- per month in respect of the suit premises to the Respondents by way of mesne profit.

5. Heard Learned Counsel for the parties.

6. After arguing for some time, the Learned Counsel for the Applicant submits that Applicant No.2 is present in Court. He submits that Applicant No.2 is ready and willing to make statement before this court that they are ready and willing to pay a sum of Rs. 7,500/- per month by way of compensation to the Respondent/Original Plaintiff subject to outcome of the First Appeal. Statement is accepted.

7. At this stage, the Learned Counsel for the Respondent submits that they have no objection if Applicant continues to stay in the suit premises on payment of sum of RS.

7,500/- per month but they should not create any third party, right, title and interest in respect of the suit premises till the hearing and final disposal of the First Appeal.

8. By consent of both the parties, the following order is passed:

a. The Respondents are restrained by order of injunction from disturbing the Applicants' possession in respect of the suit premises i.e. Block No. 4B in Bai Alami Shapoorji Mistry Charitable Building belongs to Pallongi Shampoorji Charity Trust, Parel till the hearing and final disposal of the First Appeal.

b. The Applicants to pay sum of Rs. 7,500/- by way of compensation to the Respondents from the month of May 2019 till the hearing and final disposal of the First Appeal.

c. The Applicants to pay compensation of Rs. 7,500/- to the Respondents on or before 10th of each month.

d. Arrears of compensation up to October, 2019 to be cleared in two equal installments by December, 2019.

e. The Applicants to file undertaking in the Registry of this Court that they will not create any third party right, title and interest in respect of the suit premises till the hearing and final disposal of the First Appeal including relatives those are staying with them, on or before 16/11/2019.

f. If there is any default in payment of the compensation, the interim relief shall stand vacated without further reference to the Court and in that case, the Respondents can take appropriate steps according to Law.

g. Civil Application stands disposed of accordingly.

h. No order as to costs.

(K.K.TATED, J.)