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

**APPEAL FROM ORDER NO. 223 OF 2019
WITH
CIVIL APPLICATION NO. 264 OF 2019
IN
APPEAL FROM ORDER NO. 223 OF 2019**

M/s. K.B. Developers and Builders ..Appellants
vs.
Laxman Patel Gandhi & ors. ..Respondents

....
Shri Vimlesh Singh for appellants.
Mrs. Madhuri More for MCGM.

....
CORAM : M.S.KARNIK, J.

DATE : 26th JULY, 2019

P.C. :

The appellants are challenging the order passed by the Bombay City Civil Court dated 9th July, 2018. The Notice of Motion was filed by the original plaintiffs for the following reliefs :

- a) Pending the hearing and final disposal of the suit, Honorable Court by an order of injunction restrain the defendant, his servant/s, agent/s and/or any other person/s acting on their behalf from dispossessing the plaintiffs from the suit premises, being Bhushan Bhavan, New Hall Village Road, Kurla (W), Mumbai – 400 070 without following due process of law.
- b) Pending the hearing and final disposal of the suit, Honorable Court by an order of injunction restrain defendant to cut off the power and water supply to the plaintiffs and reinstate them

if any adverse acts are carried out by the concern agencies or defendant No.2 in doing so.

2. The trial Court heard the Notice of Motion and passed the following order, the operative portion of the order reads thus :

1. Notice of Motion (Unregd.) is rejected.
2. Direction given to the Defts/BMC to provide temporary transit accommodation to the plaintiffs/occupants of the suit building for 15 days. Within 15 days the tenants shall search and shift in alternate premises.
3. Direction given to Defendant No.2/Developer, Landlord and Owner of the suit building to immediately enter into the registered redevelopment agreement with all the tenants and also submit the sanction plan to the BMC for redevelopment of the suit building as early as possible.

3. No one appeared on behalf of the respondents on the last occasion. Even today none appears on behalf of the respondents - original plaintiffs.

4. Mrs. More appears on behalf of the corporation.

5. There is no dispute that the building in question has already been demolished. Furthermore even as per the order passed by the trial Court, the trial Court had directed the BMC

to provide temporary transit accommodation to the plaintiffs/occupants of the suit building for 15 days to enable the tenants to search and to shift in alternate accommodation.

6. Considering the prayers made in the Notice of Motion and the reliefs, in my opinion, the trial Court was not justified in issuing directions in terms of Clause 3 of the operative order dated 9th July, 2013 as that was not the relief prayed for in the Notice of Motion. The order passed by the trial Court as regards the direction contained in Clause 3 of the order dated 9th July 2013 is quashed and set aside. The Appeal is partly allowed.

7. Needless to mention that it is open for the plaintiffs to seek appropriate reliefs in the nature as contained in Clause 3 of the order by filing appropriate Notice of Motion/proceedings for obtaining the said reliefs. The said Notice of Motion/application will be considered independently on its own merits without being influenced by any observations made by me in this order.

8. The Appeal is disposed of.

9. In view of the disposal of the Appeal, nothing survives for consideration in the Civil Application. The Civil Application is disposed of.

(M.S.KARNIK, J.)