

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****APPEAL FROM ORDER NO.825 OF 2019
WITH
CIVIL APPLICATION NO.981 OF 2019
IN
APPEAL FROM ORDER NO.825 OF 2019**

Mr. Jawaharlal Chaturi Viswakarma ...Appellant/Orig. Plaintiff

vs.

Radheshyam Developers ...Respondent/Orig. Defendant

.....

Ms. Anita R. Dwivedi, for the Appellant.

Mr. Vijay M. Vaghela, for the Respondent.

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CORAM : S.C. GUPTE, J.

DATED : 14 AUGUST 2019

P.C. :

. This appeal from order challenges an order passed by the City Civil Court at Dindoshi on an ad-interim application of the Appellant (original plaintiff) in a notice of motion filed in a suit seeking a perpetual injunction from disturbing the possession of the plaintiff of the suit premises. The suit premises consists of a room, being Room No.1, Shree Siddhivinayak Seva Mandal, Wadarpada, Akurli Cross Road No.1, Kandivali (E), Mumbai. It is not in dispute that the suit premises forms part of a slum development scheme undertaken by the defendant. It is also not in dispute that Annexure II in respect of eligibility of the occupants to secure an alternative accommodation in the redeveloped

building has been published and the plaintiff's name does not figure in the annexure as eligible occupant. In fact the annexure produced with the defendant's written statement in the suit shows the suit structure described as Sr. No. 43 in the name of one Pavan Sunil Kambale, who is held to be an eligible occupant in respect of the structure. It is the grievance of the plaintiff that despite having documentary evidence in his possession in respect of his occupation of the suit structure as of the relevant date, his eligibility has not been accepted by the Competent Authority and that the defendant is likely to dispossess him otherwise than by due process of law.

2. So far as the eligibility of the plaintiff is concerned, it is a matter to be agitated by the plaintiff before the Competent Authority so as to rectify the entry in Annexure II. So far as the so called possession of the plaintiff is concerned, learned Counsel for the defendant clarifies that possession will be sought in accordance with law by making an appropriate application under Section 33 of the Maharashtra Slum Areas (Improvement, Clearance And Redevelopment) Act, 1971 ("the Act").

3. Learned Counsel for the defendant further submits that in case any application is made by the plaintiff to the Competent Authority for determining his eligibility to the suit structure, the defendant shall not in any way obstruct such application.

4. In view of the statements made by learned Counsel for the defendant, which are accepted by the Court, learned Counsel for the plaintiff does not press her appeal from order. Learned Counsel seeks

liberty to agitate her grievance before the Competent Authority for determination of her client's eligibility.

5. All rights and contentions of the parties in that behalf are open.

6. The appeal from order is disposed of as not pressed with liberty granted as above.

7. In view of the disposal of the appeal from order, the civil application does not survive and is also disposed of.

(S.C. GUPTE, J.)

Smita
Gonsalves

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