

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

**NOTICE OF MOTION No. 75 OF 2012
IN
SUIT No. 36 OF 2012.**

Prakash Rao ..Plaintiff.
Vs
Smt. Shubha Amarnath & Ors. ..Defendants.

**WITH
NOTICE OF MOTION No.2190 OF 2018
IN
SUIT No. 36 OF 2012.**

Smt. Shubha Amarnath ..Applicant/Deft.No.1.

In the matter between :-

Prakash Rao ..Plaintiff.
Vs
Smt. Shubha Amarnath & Ors. ..Defendants.

Mr. Amod Tilak for the Plaintiff in NMS/75/2012.
Mr. C.P. Deogirikar for Applicant/Defendant No.1
in NMS/2190/2018.

**CORAM : B. P. COLABAWALLA, J.
DATED :- 25th February, 2019.**

P.C. :

1. Notice of Motion No. 75 of 2012 has been filed by the

plaintiff inter alia seeking the relief of appointment of a receiver as well as for an order of injunction in relation to the suit flat namely Flat No.14, situated at Basant Vihar, Plot No. 362/2, 6th Road Chembur, Mumbai-400 071 (for short “the suit flat”). When this notice of motion had come up at the ad-interim stage, this Court by its order dated 23rd January, 2012 had recorded a statement on behalf of defendant No.1 that she shall not dispose of, alienate, encumber, part with possession or create any third party rights over the suit flat. That statement was accepted by the Court. Now this notice of motion has come up for hearing and final disposal.

2. As far as Notice of Motion No. 2190 of 2018 is concerned, the same is filed by defendant No.1 seeking relief that the plaintiff and defendant No.3 society be restrained from forceably dispossessing defendant No.1. Further reliefs sought are that defendant No.3 through the builder should provide an alternate accommodation and all other benefits as per the redevelopment scheme entered into between the Society and the said builder and for seeking possession of permanent alternate accommodation in the newly constructed building. This motion, according to defendant No.1, has been necessitated in view of the fact that defendant No.3

Society has decided to submit the building for redevelopment for which a builder has been appointed.

3. The learned Advocate appearing on behalf of defendant No.1 has stated that since the building will be undergoing redevelopment, defendant No.1 is willing to handover possession of the suit flat to the Society/Builder so as to enable them to undertake the task of redevelopment. He however states that under this pretext, defendant No.1 cannot be ousted from the suit flat. In these circumstances, he submitted that as and when the building is redeveloped and new flats are allotted, the flat to be allotted in lieu of flat No.14 (in the old building) be given to defendant No.1 and which would be subject to the outcome of the suit. Similarly, if any transit accommodation or compensation in lieu of transit accommodation is to be paid as per the redevelopment scheme, the same should be in favour of defendant No.1.

4. These reliefs have been vehemently opposed by the Advocate for the plaintiff. According to the plaintiff, defendant No.1 has no right, title or interest in the suit premises and therefore cannot be granted the benefits of redevelopment. He therefore

submitted that there is no question of passing any such directions.

5. I have heard the learned Counsel for the parties at length and perused the papers and proceedings in both the notice of motions. It is not in dispute that possession of the suit property is currently with defendant No.1. According to defendant No.1, she has been in possession since the past 27 years. Considering that the building is being submitted to a redevelopment scheme, I think it would be in the fitness of things if the following directions are passed :-

- (i) In the event of redevelopment of the building known as “Basant Vihar”, defendant No.1 shall hand over possession of the suit flat to defendant No.3 society and/or builder to enable them to undertake the task of redevelopment;
- (ii) Defendant No.1 shall be entitled to all the benefits under the redevelopment scheme including the allotment of temporary alternate accommodation or compensation in lieu thereof, as the case may be;

- (iii) If the redevelopment of the said building is complete before the disposal of this suit, the builder / society shall hand over possession to defendant No.1 of a tenement which was to be allotted in lieu of the suit flat. It is made clear that this arrangement will be subject to outcome of the present suit;
- (iv) Barring handing over possession of the suit flat to the society/builder for redevelopment, defendant No.1 shall not create any third party rights or interest either in respect of the suit flat or in respect of the new tenement that would be allotted in lieu of the suit flat, till the hearing and final disposal of the suit;

6. I think this order will meet the ends of justice and would safeguard the interest of all parties.

7. Both the notice of motions are disposed of in the aforesaid terms. No order as to costs.

(B.P. COLABAWALLA, J.)