

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY AND ORIGINAL CIVIL JURISDICTION**

**NOTICE OF MOTION NO.115 OF 2019
WITH
NOTICE OF MOTION NO.1174 OF 2017
IN
SUIT NO.380 OF 2017**

Karunamoy K. ChakravartyApplicant/Org. Def. No.4

IN THE MATTER BETWEEN :

Sanjay Sadanand RanePlaintiff

Vs.

M/s. K. Mehta and Company and Ors.Defendants

Mr. Ranjiv Carvalho a/w. Mr. Mangesh Avhale I/b. Herbert Anthony Noronha for plaintiff.

Mr. Anosh Sequeira a/w. Mr. Kalpesh Mehta and Ms. Mansi Shah I/b. M/s. Pravin Mehta and Mithi and Company for defendant no.1.

Mr. T.N. Tripathi I/b. T.N. Tripathi and Company for applicant in NMS/115/2019 and for defendant no.4.

CORAM : K.R.SHRIRAM, J.

DATE : 16th JANUARY 2019

P.C.:

1 Heard the parties. Mr. Carvalho, counsel for plaintiff does not dispute the fact that (a) defendant no.4 has been in possession of the flat for almost 45 years, (b) defendant no.4 handed over possession to defendant no.1 for redevelopment, (c) the permanent alternate accommodation agreement also is between defendant no.1 and defendant no.4 and (d) the rent for alternative accommodation has also been paid by defendant no.1 to defendant no.4. Mr. Carvalho, however, states that the claim for tenancy by defendant no.4 is disputed by plaintiff and the suit filed by defendant no.4 for declaration as tenant has been dismissed way back in 1989.

2 Mr. Sequeira, counsel for defendant no.1 states that defendant no.1 was the owner of the land in which the building was situated and defendant no.4 has been occupying the suit flat for almost 45 years and plus.

3 Defendant no.1 has completed the building and since September 2018 has stopped paying defendant no.4 the rent for alternate accommodation because the flat is ready for occupation by defendant no.4. Even Occupation Certificate for the building has been issued by Brihanmumbai Municipal Corporation.

4 The proceedings for possession taken out by plaintiff in DRAT are also pending. Applicant is also of 95 years of age. It is also not disputed by Mr. Carvalho that they were aware that defendant no.4 was in possession when they decided to purchase the flat as auction purchaser on as is where is basis.

In the circumstances, certainly the balance of convenience tilts in favour of defendant no.4, who is applicant.

5 Therefore, the following order is passed :

1. The order dated 18th January 2017 passed in Notice of Motion (L) No.12 of 2017 is modified to the extent that Defendant No.1 is directed to place Defendant No.4 in peaceful and vacant possession of flat No. 103, admeasuring about 700 sq. ft. (carpet) area on first floor in newly constructed building known as “Shree Rasraj Tower” along with one car parking space in lieu of flat No.E-40, plot No.184, Hissa No.7, Rokadia Cross Lane, S. V. Road,

Borivili (West), Mumbai-400 092 (“**suit flat**”) on or before 22nd January 2019.

2. Defendant No.4 undertakes to this Hon’ble Court that prior to being put in possession of the suit flat, he shall pay Defendant No.1 Rs.1,69,671/- towards maintenance and other expenses as per particulars set out in paragraph-4(m) of the Affidavit-in-Reply of Defendant No.1 to the above Notice of Motion on or before 21st January 2019.

3. Defendant No. 4 for himself, his legal heirs and any person claiming or may claim through or under him undertakes to this Hon’ble Court that pending the hearing and final disposal of the present suit, he/they shall promptly and without objection pay all maintenance charges, property taxes, municipal charges, statutory dues and outgoings etc. of whatsoever nature in respect of the suit flat.

4. Defendant No.4 for himself, his heirs and any person as may claim or claiming under or through him agrees and undertakes to this Hon’ble Court not to alienate, encumber and/or create any third party rights of any nature whatsoever or part with possession of the suit flat or any part or portion thereof during the pendency of the above Suit and that the same will be used only by the Defendant No.4 and his family members. The undertaking shall be binding on Defendant No.4 as well as his legal heirs.

5. Pending the hearing and final disposal of this suit, Defendant Nos.1 and 4 will not enter into any agreement with one another with respect to the suit flat, save and except with the leave of this Hon’ble Court.

6. This order is passed without prejudice to the rights and contentions of the parties in legal proceedings and will be subject to the final outcome of the present Suit. The Hon’ble D.R.A.T., D.R.T. and Recovery Officer will not be influenced by this Order and shall decide the proceedings before them on its own merits. Defendant No.4 shall not claim any equities on the basis of this order.

7. In the event plaintiff succeeds in the suit, plaintiff will reimburse to Defendant No.4 the amount of Rs.1,69,671/-

together with interest at such rate as the Court will direct at the appropriate stage.

6 Notice of motion no.115 of 2019 accordingly stands disposed.
In view of the above order, notice of motion no.1174 of 2017 also stands disposed.

(K.R. SHRIRAM, J.)