

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

Amk

APPEAL (L) NO. 338 OF 2019
IN
NOTICE OF MOTION NO. 980 OF 2019
IN
CONTEMPT PETITION NO. 38 OF 2017
IN
NOTICE OF MOTION (L) NO. 553 OF 2015
IN
SUIT NO. 2160 OF 2009

Prasad J. Satam .. Appellant
Vs.
Vijay A. Gosrani & Ors. .. Respondents

Mr. Vishal Kanade i/b Mr. Jignesh Shah for the Appellant.
Mr. Chirag Balsara a/w. Mr. Ashish Sharma i/b ALJ & Partners for
Respondent No.1.

**CORAM : PRADEEP NANDRAJOG, C.J. &
SMT. BHARATI DANGRE, J.**
DATE : 1st OCTOBER, 2019.

P. C. :

1. Learned Counsel for the 1st Respondent pleads no instruction.
2. The impugned order dated 05.04.2019 has dismissed Notice of Motion No. 980 of 2019 filed in Contempt Petition No. 38 of 2017 which in turn was filed in Notice of Motion (L) No. 553 of 2015, which in turn was filed in Suit No. 2160 of 2009.
3. The impugned order record that the Notice of Motion is thoroughly misconceived because membership of the Applicant was in

dispute and said issue was alien to the dispute in the main proceeding. It holds that there is no violation of any Court order either by the society or by the developer.

4. Regretfully the impugned order ignores the fact that the Appellant was treated as valid member of the society which entered into a development agreement with the 1st Respondent (on a date not known). It is regretted that the learned Counsel is not even able to give the date of the agreement which is the foundation of the claim.

5. Be that as it may, under the agreement the developer was to redevelop the existing tenements and till the tenements were rebuilt and possession handed over, ₹ 40,000/- p.m. was payable as transit fee.

6. Members of the society including the Appellant took out Notice of Motion (L) No. 553 of 2015 which was disposed of by consent on 11.03.2015 requiring the Plaintiffs which included the appellant to vacate their respective tenements by 30.04.2015. The developer was to pay transit accommodation @ ₹ 40,000/- p.m. till redevelopment was completed. Under the agreement which resulted in the consent order being passed the developer paid transit rent to the Applicant only till 30.04.2017. This led to the Contempt Petition No. 38 of 2017 being filed which was disposed of on 14.02.2018. The said order records that for some occupants issue regarding their eligibility to occupy the tenement arose. Names of the persons were recorded in four lists annexed as Annexures 'A', 'B', 'C' & 'D' to an Affidavit filed by one Ms. Virkar, an Officer of the Corporation. Name of the Applicant was in Annexure 'A'. This list was sub-divided into two lists which were assigned numbers Annexure-1 and Annexure-2. Name of the Applicant

was in Annexure-2 and thereby the Applicant/Appellant states that he would be entitled to transit rent post 1st May, 2017. Since the transit rent was not paid after 01.05.2017, Notice of Motion No. 980 of 2019 was taken out which has been dismissed as misplaced and a case of gross simplification.

7. This is incorrect. The Applicant has not resorted to any over simplification much less gross over-simplification. Regretfully the facts which we have noted have not even been recorded in the said order.

8. Thus, we dispose of the Appeal setting aside the impugned order dated 05.04.2019. We restore Notice of Motion No. 980 of 2019 with a direction to the learned Single Judge to note the facts concerning the eligibility of the members of the society in the context of the affidavit filed by Ms. Virkar.

[SMT. BHARATI DANGRE, J.]

[CHIEF JUSTICE]