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

WRIT PETITION NO. 2731 OF 2021

Akshay Gajanan Sawant ..Petitioner
V/s.
Smt. Linita Anant Pawar & Ors. ..Respondents

**WITH
WRIT PETITION NO. 2733 OF 2021**

Vidyasagar Ghanshyam Singh ..Petitioner
V/s.
Smt. Linita Anant Pawar & Ors. ..Respondents

Mr. Sanjeev Sawant a/w Rohan Mahadik with Pramod Londhe,
Rachana Karade i/b The Juris Partners for the Petitioners.
Mr. A. J. Jadhav for the Respondent Nos. 1 to 3.
None for Respondent No.4.

CORAM : C.V. BHADANG, J.

DATE : 15 SEPTEMBER, 2021

P.C.

1. Both these petitions can be conveniently disposed of on a short count. The petitions are taken up for final disposal by consent of parties.

2. The Petitioner-Plaintiff has filed RCS No. 11 of 2021 and RCS No. 13 of 2021 under Section 6 of the Specific Relief Act, which are pending before the learned Civil Judge, Junior Division, Vashi, Navi

Mumbai. The case made out is that the Petitioner is the bonafide purchaser and owner of the suit flats in which Respondent Nos. 1 to 3 have forcibly entered and are continuing in possession. The specific case made out is that these Respondents had forcibly trespassed and entered into the suit flats on 24.09.2019. The suits came to be filed on or about 21.03.2020. In the said suits, the Petitioner filed applications (Exh.5) for interim injunction seeking following reliefs:

- (i) Restoration of possession at the interim stage.
- (ii) Appointment of Court Receiver and to appoint the Petitioner as an agent of the Court Receiver.
- (iii) To grant compensation for unauthorised occupation and
- (iv) An order restraining the Respondents from creating third party interest in the suit flats.

3. The learned Trial Court by the impugned order dated 05.03.2021 has rejected the applications. Hence, these petitions.

4. I have heard the learned counsel for the Petitioner and the learned counsel for the Respondent Nos. 1 and 3. None appears for the fourth Respondent.

5. Mr. Sawant, the learned counsel for the Petitioner has submitted that the Petitioner is a bonafide purchaser of the suit flats from the fourth Respondent, who is the Developer and has been consistently paying the EMIs in respect of the financial assistance obtained. It is submitted that on account of the fact that the Petitioner has lost possession, he could not pay the EMIs on account of which the concerned Bank has initiated proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act. It is submitted that there is overwhelming evidence to show that the Petitioner was in possession of the suit flat as owner thereof and Respondents defendants have no right to be in possession. It is submitted that the learned Trial Court has failed to see that there was no reply filed on behalf of Respondent Nos. 1 to 3 to the Application for injunction. It is submitted that there appears to be *inter se* dispute between the Respondent Nos. 1 to 3 who are the owners and the Respondent No. 4, who is the Developer. However, on account of any such dispute, the Petitioner cannot be made to suffer. The learned counsel points out that there is no consideration insofar as the prayer for grant of compensation for unauthorised occupation and an order for restraining from creating third party interest.

6. The learned counsel for the Respondent Nos. 1 to 3 has submitted that there is a false and forged document which has been brought into existence by the Respondent No.4 in favour of the Petitioner.

7. However, it transpires during the course of hearing that at this stage, there is no such challenge raised by these Respondents to the said document. The learned counsel for the Respondent Nos. 1 to 3 also in all fairness did not dispute that there is no consideration in the impugned order insofar as a prayer for grant of compensation and the order against creation of third party interest. The learned counsel on instructions states that these Respondents have no intention to create any third party interest at present. In the light of the rival submissions made and the fact that the Trial Court has not considered the prayer for grant of compensation and for restoration of possession, in my considered view, the application can be sent back to the Trial Court for reconsideration.

8. In such circumstances, the petitions are disposed of in the following terms.

- (i) The petitions are partly allowed.
- (ii) The impugned orders are hereby set aside.

(iii) Application Exh.5 is restored back to the file of the learned Trial Court in both the suits for disposal, according to the law, in the light of the observations made above.

(iv) The Respondent Nos. 1 to 3 are hereby restrained from creating third party interest and/or parting with possession of the suit flats in favour of third party, pending the disposal of the application Exh.5 before the Trial Court, in both the suits.

(v) The Respondents are at liberty to file reply to the application within two weeks from today.

(vi) The parties to appear before the Trial Court on 27.09.2021.

(vii) The Trial Court shall proceed to hear the suits and the application (Ex.5) as expeditiously as possible. The parties to co-operate for the early disposal of the suits/applications.

(viii) The rival contentions of the parties on merits are left open.

(ix) Both petitions are disposed of in the aforesaid terms with no order as to costs.

C.V. BHADANG, J.