

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.491 OF 2022
ALONG WITH
INTERIM APPLICATION NO.3126 OF 2022

Vipul Shah] ... Appellant

Vs.

Jahangir Mansion Co-op. Housing]
Society Limited.] ... Respondent

...

Mr. G.S. Godbole i/b Mr. Drupad S. Patil and Mr. Dheeraj Patil for the appellant.

Mr. Shanay Shah i/b Mr. Ashwin Sawlani for respondent No.1.

Mr. Cyrus Ardhesir with Mr. Mandar Limaye, Mr. Yadunath Choudhari, Mr. Chinmaya Acharya i/b Mr. Kevin Pereira for respondent No.2.

Mr. P.G. Lad with Adv. Sayli Apte for respondent-MHADA.

...

CORAM : SMT. BHARATI DANGRE, J.

DATED : 06TH MAY, 2022.

P.C. :-

1. The appeal is filed, being aggrieved by the rejection of ad-interim relief in a notice of motion taken out by the plaintiff.

2. The plaintiffs, claiming to be in lawful use, occupation and possession of Flat No.7 in the capacity of being the owner thereof, admeasuring 101.78 sq. mtrs. along with two adjoining terraces located at the 2nd Floor, Jehangir Mansion CHS Limited at Plot No.518, H.R. Mahajani Marg, Matunga, Mumbai, are aggrieved by the issuance of notice under Section 95(A) of the MHADA, alleging that the said notice is issued in collusion and connivance with other defendants. In the suit filed by them, various reliefs were sought primarily seeking a restrain order against the defendants from dispossessing the plaintiffs or interfering with or obstructing their peaceful use, occupation and possession of the suit premises without following due process of law. An injunction was also sought from taking possession or forcibly evicting the plaintiffs and their family members from the suit premises as described above.

3. The respective parties fairly state that as on date, the position is that the possession of the suit premises are taken over by the MHADA and made over to the Developer. As a consequence, the parties are *ad-idem* that the notice of motion deserves a disposal.

4. Mr. Godbole, the learned counsel has invited my attention to a communication addressed by the Developer to the plaintiffs on 20/12/2021 in the capacity as a non-cooperative member and in the said communication, two offers were made to them, the first

one being an entitlement for a permanent alternative accommodation admeasuring 107.05 sq. mtrs. and 5% additional carpet area under Regulation 33(7)5(a) of the DCPR in the form of 'Entitled area'. Apart from this, another offer was contained in paragraph No.7 of the communication, which reads thus:

“7. My clients are agreeable to offer you, monthly rent of Rs.1,13,190/- @ Rs.120/- per sq.ft. per month on your Existing Flat Carpet Area including Balcony Area, equivalent to 87.63 sq. mtrs. hereinafter referred to as 'Existing Area', from the date you execute the PAAA and vacate and handover quiet, vacant and peaceful possession of your existing premises to my clients. My clients will also provide you with Corpus of Rs.2000/- per sq.ft. on your Existing Area and payment for the same shall be as per schedule mentioned in the Development Agreement, brokerage equivalent to 1 month Rent and one time shifting charges of Rs.25,000/- per Member/Occupant from the date you execute the PAAA and vacate and hand over quiet, vacant and peaceful possession of your existing premises to my clients.”

5. When the learned counsel for the Developer is specifically asked whether the Developer is ready to abide by the said stipulation contained in paragraph Nos.5, 6 and 7 of their communication dated 20/12/2021, the response is in the affirmative.

6. The parties have agreed that the appellant is entitled to 1443 sq. ft. of area.
7. By recording that the Developer shall adhere to their offer contained in paragraph Nos.5, 6 and 7 of the communication dated 20/12/2021 and by recording the same, the appeal deserves a disposal.
8. However, the parties are not able to reach at a consensus whether the disposal of the appeal will result in disposal of the suit, which is pending before the Bombay City Civil Court. Since Mr. Godbole states that there are some prayers, which would be adjudicated upon by the Bombay City Civil Court, keeping the said issues open, the appeal stands disposed off.
9. Upon compliance at the hands of the Developer, the appellants shall immediately execute the PAAA and shall not create any hurdle in execution of the project by the Developer.
10. In view of the disposal of the appeal, the interim application does not survive and is disposed off as such.

[SMT. BHARATI DANGRE, J.]