

Sharayu Khot.

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

INTERIM APPLICATION NO. 1047 OF 2020

IN

COMMERCIAL SUIT NO. 181 OF 2018

Prakash Shriram Desai

...Applicant

In the matter between

Sanghvi Premises Pvt.Ltd.

...Plaintiff

Versus

Rajesh Mahadev Mane & Ors.

...Defendants

Mr. Mayur Khandeparkar i/by Mr. Meet Vora for the Applicant.

Mr. Naushad Engineer a/w Mr. Aditya Shiralkar, Ms. Riya Makwana, Ms. Apeksha Khetan i/by I.C. Legal for the Plaintiff.

Mr. Ajit Hon i/by Mr. Pramod M. Patil for the Defendant No. 13.

CORAM : R.I. CHAGLA J

DATE : 03 January 2022

ORDER :

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1. By this Interim Application, the Applicant is seeking impleadment as party Defendant in the above Suit.

2. The Applicant is one of the occupants who has

vacated his respective premises on the said land and handed over possession for the purpose of demolition. The Applicant states that the Applicant has been continuously facing severe hardship, prejudice and loss, because of the lackluster attitude of the Plaintiff and non-cooperative attitude of Defendant Nos. 1 and 3 to 12.

3. The Applicant has been out of the home for the last seven years. Similar hardship has also been faced by other occupants who have also been out of their homes for the same period of time and are supporting the case of the Applicant and have filed respective Affidavits to that effect.

4. The Applicant is stated to be an original tenant and so also the Defendant Nos. 1 and 3 to 12 of Sahadev Arjun Kadam, who is lessee of Mr. John Felix Jacinto and Apolonia Bridget Jacinto (“**Jacinto**”) who had constructed the tenements on a portion of the said property and had let them out to 99 occupants. It is stated that upon expiry of the lease term, Sahadev Arjun Kadam did not vacate the said property and accordingly, the said Jacinto filed eviction Suit in the Small Causes Court, Bandra being Suit No. 550/3528 of 1970 against

the said Sahadev Arjun Kadam. The Suit came to be settled by the Consent Terms entered into on 19th August 1980. The Small Causes Court, Bandra was pleased to pass a decree on that day of eviction by consent of the parties.

5. It is stated that thereafter, the Defendant No. 13 started developing the said property and constructed building known as Gajanan Niwas (now known as "Landmark") on the front portion of the said property. The Defendant No. 13 shifted/rehabilitated the 29 occupants in landmark building and demolished their original structure. The legal heirs of Gajanan Sahadev Kadam by various writings dated 4th February 1993 surrendered the said land with temporary structures occupied by the 99 occupants in favour of the Defendant No. 13 by accepting an extra payment of Rs. 4,00,000/-. Since, the remaining 99 occupants were not co-operating at the instance of Defendant No. 13, on or about 28th August 1992 the Small Causes Court issued warrant of possession in execution of decree dated 19th August 1980. As the execution of the decree passed by the Small Causes Court was obstructed by such 99 temporary occupants including the present Applicant, Defendant No. 13 took out Obstructionists

Notice No. 14 of 1992 against them. This application is still pending.

6. By a registered development agreement dated 19th April 2007 executed between the Plaintiff and Defendant No. 13 and which is duly registered, the development rights were granted by Defendant No. 13 in favour of the Plaintiff in respect of the part of the said property, which included the property on which the structures in occupation of the Obstructionists were situated.

7. Thereafter, the agreements were entered into between the Plaintiff and the occupants on the said property (including the Applicant and the Defendants) for permanent alternate accommodation. The Applicant as well as the occupants other than Defendant Nos. 1 and 3 to 12 pursuant to the said agreements, handed over possession of their respective premises on the part of the said properties on which the development was to commence. The Plaintiff has demolished the structures and the Plaintiff has been paying temporary alternate accommodation charges every month to the Applicant since the date of vacation. The Applicant and

other occupants who have vacated their respective premises are staying on rent in temporary accommodation and have to keep moving from one premises to another, almost every year.

8. The learned Counsel for the Plaintiff states that the Plaintiff is interested in developing the portion of the said property and has no objection to the Applicant being heard in the Interim Application filed by the Plaintiff.

9. The Applicant has also submitted that the Defendant Nos. 1, 3 to 12 requires to shift to temporary accommodation by vacating their respective premises so that the Plaintiff can commence the construction of the rehab building in which the Applicant as well as other occupants have been allotted permanent alternate accommodation for which they have been waiting for long.

10. The Applicant has stated that upon the Defendant Nos. 1 and 3 to 12 being approached by the Applicant after coming to know of the present Suit and their being asked by the Applicant as to the reason for non co-

operation, the Applicant has been informed that these Defendants have a better offer. It is stated that the legal heirs of late Sanjay Kadam who claims to be the owners of the said property through one Mr. Sunil Pandurang Jethe Bhanushali who is claimed to be the Constituted Attorney of the legal heirs of late Sanjay Kadam represented to these Defendants that the legal heirs of late Sanjay Kadam would offer much more area if these Defendants agreed to accept them as owners and executed documents in their favour. The Applicant requires these facts to be brought on record in the above Suit.

11. Having considered the averments in the Interim Application as well as the submissions of the learned Counsel on behalf of the Applicant as well as the learned Counsel for the Plaintiff, a case is made out for impleadment of the Applicant as party Defendant in the above Suit. Hence the following order :-

- (i) Interim Application is allowed in terms of prayer clause (a).

(ii) The Plaintiff shall carry out the necessary amendment in the Plaint as well as Interim Application to join the Applicant as party Defendant within a period of one week from the today i.e. on or before 10th January 2022.

(iii) Interim Application is disposed of in the above terms. There shall be no order as to costs.

(iv) Commercial Notice of Motion No. 282 of 2018 shall be placed on 25th January 2022 under the caption for *ad-interim*.

[R.I. CHAGLA J.]