

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO. 2148 OF 2021

IN

WRIT PETITION NO. 43 OF 2017

Ajay K. Seth

..... Applicant

IN THE MATTER BETWEEN

Madanlal Gulabchand Bhutra

..... Petitioner

VERSUS

The State of Maharashtra & Ors.

..... Respondents

Mr.Amogh Singh, a/w. Ms.Moksha Doshi, Ms.Bhavna Doshi, i/b.
Ms.Bhavin Bhatia for the Petitioner.

Ms.Oorja Dhond for the Respondent – MCGM.

Mr.S.B.Gore, A.G.P. for the State.

Ms.Shagufta Q.Qureshi for the Respondent no.9.

Mr.Joseph Fernandes for the Respondent no.10.

**CORAM: R. D. DHANUKA AND
M.G.SEWLIKAR, JJ.**

DATE : 8th JULY, 2022

P.C:-

By this interim application filed by the original respondent no.10
in the Writ Petition No. 43 of 2017, the applicant prays for an order and
direction against the original petitioner to execute the permanent

alternate accommodation in favour of the applicant in terms of the order dated 5th April, 2017 subject to the outcome of the Suit No. 7513 of 2001 pending before the Bombay City Civil Court. The applicant also seeks an order and direction against the petitioner to handover possession of the said shop after proper measurement and for other reliefs.

2. This court passed an order dated 5th April, 2017 in Writ Petition No. 43 of 2017 filed by the original petitioner. The respondent nos. 9 and 10 are brother and sister. Both parties made a statement before this Court on 5th April, 2017 in the said Writ Petition No.43 of 2017 that the transit accommodation charges shall be paid by the original petitioner to respondent no.10. The respondent no.10 made a statement that the orders that would be passed by the City Civil Court in the said Suit No. 7513 of 2001 would be followed. The respondent no.10 also gave an undertaking to this Court that he will abide by the City Civil Court's verdict in respect of the rights of the parties and the amount which respondent no.10 would be going to receive, would be subject to the orders passed by the Civil Court. The respondent nos. 9 and 10 also made a statement before this Court that they would execute the

necessary agreement.

3. Learned counsel for the respondent no.10 submitted that after construction, the possession of the subject tenament should be handed over to him. This Court accordingly held that the said issue will be taken into consideration at the time of completion of the building and kept the said issue open. The said writ petition is subsequently disposed of. The construction of the said building is now completed.

4. Mr.Singh, learned counsel for the original petitioner on instruction states that the shop which has to be given to the then tenant in lieu of the existing tenament, possession whereof was taken from respondent no.10 is ready for handing over possession.

5. Insofar as issue of permanent alternate accommodation is concerned, it is submitted that in compliance of the order dated 5th April, 2017, his client is ready and willing to execute an agreement in favour of the respondent nos. 9 and 10 jointly subject to the outcome of the pending proceedings between the parties before various Courts.

6. Learned counsel for the respondent no.9 vehemently urge that since her client has been dispossessed by the respondent no.10, the possession of the new tenament shall be handed over to her client. She however, has no objection to execute the agreement jointly with respondent no.10 with the petitioner.

7. Insofar as possession of the new tenament is concerned, learned counsel for the respondent no.9 does not dispute that the suit bearing no. 7513 of 2001 filed by her client for seeking restoration of possession of the said tenament under section 6 of the Specific Relief Act is still pending before the City Civil Court. It is common ground that when the respondent no. 9 filed the said suit against the respondent no.10, on the date of filing the said suit, the respondent no.10 was in possession of the said shop. The respondent no.9 also does not dispute that the possession of the said shop was taken by the petitioner from the respondent no.10.

8. However, since there are disputes *inter-se* between the respondent nos. 9 and 10 and in view of the fact that the suit for possession filed by the the respondent no. 9 against respondent no.10 is

pending, at this stage this Court is not inclined to direct the petitioner to handover the possession of the new flat to the respondent no.9.

9. We accordingly direct the original petitioner to handover the possession of the tenament in lieu of the existing tenament to the respondent no.10 without prejudice to the rights and contentions of the respondent nos. 9 and 10. It is made clear that both the parties shall abide by the decision that would be taken by the Courts in various proceedings described in paragraph (2) of the undertaking dated 12th April, 2017 filed by the respondent no.10 in Writ Petition No. 43 of 2017.

10. The respondent no.10 shall not create any third party rights or part with possession in respect of the said flat that would be handed over by the original petitioner during the pendency of the proceedings referred in paragraph (2) of the undertaking rendered by the respondent no.10.

11. The petitioner has already furnished draft agreement for permanent alternate accommodation to the respondent nos. 9 and 10.

Learned counsel for the respondent no.10 states that his client has already suggested correction in the said draft to the petitioner.

12. At this stage, learned counsel for the respondent nos. 9 and 10 state on instruction that they are agreeable to execute the joint agreement with the original petitioner on the line of the agreement already executed by the petitioner with other tenants subject to the clause to be provided in the agreement that the said agreement would be subject to the outcome of the proceedings referred in the paragraph (2) of the undertaking rendered by the respondent no.10 in the Writ Petition No. 43 of 2017.

13. Learned counsel for the respondent no.10 makes a grievance that the petitioner has not deposited the compensation for the month of June 2021 to October 2021. Mr.Singh, learned counsel for the petitioner agrees to take instruction on this aspect from his client and if any amount is found payable, the petitioner to pay such amount to the respondent no.10 within four weeks from today. It is made clear that the respondent no.10 would receive such amount of compensation from the petitioner subject to the outcome with the proceedings described in

paragraph (2) of the undertaking rendered before this Court.

14. It is made clear that if for any reason the respondent nos. 9 and 10 do not agree with the terms of the agreement for permanent alternate accommodation within two weeks from today, the petitioner would be at liberty to execute the agreement in that event in favour of the party who would succeed in the proceedings before the Court described in paragraph (2) of the undertaking.

15. Interim application is disposed off in the aforesaid terms. No order as to costs.

16. The parties to act on the authenticated copy of this order.

[M.G.SEWLIKAR, J.]

[R.D.DHANUKA, J.]