

Sayali Upasani

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

**APPEAL FROM ORDER NO. 295 OF 2023  
WITH  
INTERIM APPLICATION NO. 3707 OF 2023**

Ravindu Naresh Turakhia and Others ...Appellants

**Vs.**

Suresh Ramsagar Sharma and Others ...Respondents

Mr. Arun Panickar, for Appellants.

Mr. Pradeep Thorat a/w Ms. Aditi Naikare with Mr.  
Abhishek Upadhyay, for Respondent No. 1.

Ms. Smita Tondwalkar, for MCGM.

**CORAM:- N. J. JAMADAR, J.**

**DATED:- 10<sup>th</sup> AUGUST, 2023**

**ORDER:-**

- 1) Heard the learned Counsel for the parties.
- 2) The challenge in this Appeal is to an order dated 21<sup>st</sup> December, 2022, in Notice of Motion No. 3594 of 2022, in L.C. Suit No. 867 of 2022, whereby the learned Judge, City Civil Court was persuaded to partly allow the Notice of Motion in terms of prayer Clause "c" and direct the appellant-defendant No. 3 to provide within 15 days temporary alternate

accommodation to the plaintiff in respect of his two premises until the permanent alternate accommodation is handed over/ allotted, till the decision of the suit.

3) The learned Counsel for the respondent-plaintiff submits that the aforesaid order came to be passed in view of the statement made on behalf of the defendant No. 3 before the trial Court.

4) Attention of the Court is invited to the observations in paragraph Nos. 12 and 24 of the impugned order. In paragraph No. 12, the trial Court has recorded that it was submitted on behalf of the defendant that provision for temporary alternate accommodation has already been made in the new building, for the plaintiff.

5) In paragraph No. 24, the Court has recorded that the defendants are ready to provide temporary alternate accommodation to the plaintiff but the plaintiff did not join the daughter and two sons who are legal representatives of the original tenants Ramsagar and Kanchadevi as parties.

6) The learned Counsel for the appellant would submit that no such statement was made on behalf of the appellant and the learned Judge, City Civil Court has misconstrued the import of

the term of 'permanent alternate accommodation' with, "temporary alternate accommodation'. It was further submitted that since the building has been demolished under Section 354 of the Mumbai Municipal Corporation Act, 1888, the liability of the landlord is only to provide the accommodation of equivalent area in the redeveloped building.

7) The observations in paragraph No. 24 indicate that the learned Judge, City Civil Court has adverted to the availability of the permanent alternate accommodation in the redeveloped building as well as the statement made on behalf of the defendant that the defendant was willing to provide temporary alternate accommodation to the plaintiff.

8) Paragraph Nos. 12 and 24 of the impugned order, read as under:-

"...12. Learned advocate for defendant Nos. 3 to 5 submitted that except plaintiff, all have executed permanent alternate accommodation. He submitted that the prayer clauses (a), (b) and (e) granting permission and regarding IOD, C.C. become infructuous because the Commencement Certificate is granted on 26/04/2022, C.C. is also issued and accordingly, the construction is going on. He submitted that as to the prayer Clause (d) of N/M restraining defendant No.3/landlord along with defendant No.4/developer selling any premises of sale components, such kind of injunction against the true owner cannot be granted. Such a relief without adding other tenant or occupant can not be granted. The plaintiff is trying to stale whole

redevelopment process by adopting pressurizing practice. He submitted that the temporary alternate accommodation provision is already made in the new building to the plaintiff. The plaintiff in order to obtain illegal gain, filed false suit against the defendant.

.....

24. The plaintiff is entitled to be treated equally as that of other tenants or occupants but it seems lacking in this case, so far as the plaintiff is concerned. The plaintiff is entitled for temporary alternate accommodation as per provision of law. The plaintiff's right is protected in newly constructed building. The learned Counsel for the defendant submitted that the provision is made in newly constructed building for the plaintiff and Shop Nos.7 and 7A is given to the plaintiff. He further submitted that defendant are ready to provide temporary alternate accommodation to the plaintiff but the plaintiff did not join daughter and two sons who are legal representatives of the original tenants Ramsagar and Kanchadevi as a party. Therefore, the defendant No.5 refuse to provide the permanent alternate accommodation to the plaintiff....."

9) It is well recognized that if it is a case of a party that a statement in the judgment/order has been incorrectly attributed to the party, the proper course is to approach the Court before which such statement was allegedly made. It is impermissible to raise such a ground before the Appellate Court as the Appellate Court can not embark upon an enquiry as to what transpired before the Trial Court.

10) A useful reference in this context can be made to the judgment of the Supreme Court in the case of **State of**

**Maharashtra Vs. Ramdas Shrinivas Nayak and Another<sup>1</sup>,**

wherein the legal position was instructively expounded:-

“4. When we drew the attention of the learned Attorney General to the concession made before the High Court, Shri A.K. Sen, who appeared for the State of Maharashtra before the High Court and led the arguments for the respondents there and who appeared for Shri Antulay before us intervened and protested that he never made any such concession and invited us to peruse the written submissions made by him in the High Court. We are afraid that we cannot launch into an inquiry as to what transpired in the High Court. It is simply not done. Public Policy bars us. Judicial decorum restrains us. Matters of judicial record are unquestionable. They are not open to doubt. Judges cannot be dragged into the arena. "Judgments cannot be treated as mere counters in the game of litigation". We are bound to accept the statement of the Judges recorded in their judgment, as to what transpired in court. We cannot allow the statement of the judges to be contradicted by statements at the Bar or by affidavit and other evidence. If the judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. The principle is well settled that statements of fact as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the judges, to call attention of the very judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error. That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. Of course a party may resile and an Appellate Court

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<sup>1</sup> (1982) 2 SCC 463

may permit him in rare and appropriate cases to resile from a concession on the ground that the concession was made on a wrong appreciation of the law and had led to gross injustice; but, he may not call in question the very fact of making the concession as recorded in the judgment.

5. In R. v. Mellor Martin, B. was reported to have said: We must consider the statement of the learned judge as absolute verity and we ought to take his statement precisely as a record and act on it in the same manner as on a record of Court which of itself implies an absolute verity".

6. In King-Emperor V. Barendra Kumar Ghose, Page, J. said:

... these proceedings emphasise the importance of rigidly maintaining the rule that a statement by a learned judge as to what took place during the course of a trial before him is final and decisive; it is not to be criticised or circumvented; much less is it to be exposed to animadversion.

7. In Sarat Chandra Maiti v. Bibhabati Debi Sir Asutosh Mookerjee explained what had to be done:

....It is plain that in cases of this character where a litigant feels aggrieved by the statement in a judgment that an admission has been made, the most convenient and satisfactory course to follow, wherever practicable, is to apply to the Judge without delay and ask for rectification or review of the judgment....

8. So the judges, record is conclusive. Neither lawyer nor litigant may claim to contradict it, except before the judge himself, but nowhere else.

11) If the impugned order is read as it stands, the operative portion of the order is clearly based on the statement made on behalf of the appellant-defendant No. 3.

12) Thus there is no propriety in entertaining the Appeal. The Appeal stands dismissed.

13) The appellant-defendant No. 3 is, however, at liberty to approach the learned Judge, City Civil Court if any clarification is required as regards the statement made on behalf of the appellant-defendant No. 3 and as recorded in the impugned order.

14) In view of disposal of the Appeal, the Interim Application also stands disposed.

15) It is hereby made clear that this Court has not entered into the merits of the matter and in the event such an application is made, the same shall be decided on its own merits and in accordance with law.

**[N. J. JAMADAR, J.]**