IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.103 OF 2023
WITH
INTERIM APPLICATION NO.1327 OF 2023

Veliben Ganesh Minat … Appellant
versus
Rise2Sky Developers LLP … Respondent

Mr J.S.Kini with Mr. Aum Kini i/by Ms. Sapna Krishnappa for Appellant.
Mr. Karl Tamboly with Mr. Nitin G. Raut, Mrs. G.P.Vas, Ms. Sunita Serrao i/by P. Vas and Co., for Respondent.

CORAM: N.J.JAMADAR, J.

DATE : 6 APRIL 2023

P.C.

1. This appeal is directed against an order dated 11 January 2023 passed in Notice of Motion No.3011 of 2022 in S.C.Suit No.2075 of 2022.

2. The Plaintiff was a tenant of Room No.2 on 2nd floor of building 'India House'. The said building was taken up for redevelopment. An agreement for permanent alternate accommodation came to be executed between the Plaintiff and the Defendant. Dispute arose as post grant of Occupation Certificate, the Defendant raised a demand vide letter dated 15 July 2022 calling upon the Plaintiff to pay an amount of Rs.7,97,840/- towards GST. A demand was also made to pay other charges, like share money, society registration charges, electric meter/water meter and proportional development charges. In the said letter, it was informed that the

Defendant had obtained occupation certificate from the Municipal Corporation.

3. Alleging that after the said letter, the Defendant stopped payment of transit rent and refused to handover possession of the permanent alternate accommodation, the Plaintiff instituted a suit seeking diverse declarations and a direction to the Defendant to pay requisite GST, if applicable, and handover possession of permanent alternate accommodation as agreed. In the said suit, the Plaintiff took out a Notice of Motion seeking temporary injunction directing the Defendant to pay requisite GST and to handover possession of the suit premises.

4. By the impugned order, the learned Judge, City Civil Court was persuaded to reject Notice of Motion holding, inter alia, that what the Plaintiff was claiming was temporary mandatory injunction, which can be granted only in exceptional cases, and if the Notice of Motion is allowed, it would amount to decreeing the suit itself. Being aggrieved, the Plaintiff is in appeal.

5. I have heard Mr Kini, learned Counsel for the Plaintiff and Mr. Karl Tamboly, learned Counsel for the Respondent at some length.

6. During the course of the submissions, the Court was informed that the liability to pay GST has yet not crystallized. In that view of the matter, at the suggestion of the Court, the Plaintiff has filed an undertaking to the effect that in the event a demand is made by the competent authority, the Plaintiff would deposit the amount of GST as may be demanded by the competent authority in the City Civil

Court.

7. The undertaking reads as under :

> "1. I have filed the above appeal for the reasons and reliefs as stated therein.
> 2. I am entitled to a permanent alternate accommodation agreement as per the agreement signed by me with the Respondent Builder.
> 3. I undertake to deposit the amount of G.S.T. in the Learned City Civil Court at Dondoshi in the pending suit, if a demand for the same is raised by the statutory authorities. I undertake to deposit the said amount within a period of 4 weeks from the date of being informed in writing with a copy of the demand of the statutory authority, by the Respondent Builder.
> 4. I further state that my claims are limited to the terms of the Permanent Alternate Accommodation agreement signed by me with the Respondent Builder.
> 5. I am ready and willing to abide by terms as this Hon'ble Court deems fit and appropriate to be imposed I the present matter."

8. It was urged on behalf of the Respondent-Defendant that the undertaking to deposit the amount is of no solace to the Defendant as the Defendant would be liable to coercive action under the Goods and Services Tax Act in the event the tax amount is not paid. Therefore, the Plaintiff be directed to pay the amount pursuant to the demand or the Respondent-Defendant be permitted to withdraw the amount and make the deposit with the tax authorities upon an undertaking that, in the event the Plaintiff succeeds in the suit, the Defendant would bring back the said amount. It was further submitted that the amount has to be deposited forthwith as the non-deposit of the tax amount entails interest and penalty.

9. Mr. Kini, learned Counsel for the Appellant/Plaintiff submitted that the Plaintiff has stated in the undertaking that she is ready and willing to abide by the terms as may be deemed fit to be imposed by this Court.

10. The situation which,thus, obtains is that the occupation certificate of the redeveloped building has been obtained. The Plaintiff is kept out of possession of the permanent alternate accommodation to which she is otherwise legitimately entitled to. At the same time, it is alleged, the Defendant has not paid the transit rent. The controversy between the parties primarily revolves around the liability to pay GST which is yet not crystallized.

11. In the circumstances, it would be expedient to dispose of the appeal by putting terms on the basis of the undertaking furnished by the Plaintiff as to payment of GST.

12. Hence, the following order :

ORDER

(i) The Appellant-Plaintiff shall deposit the amount of GST before the trial Court, on demand being raised by the competent authority and conveyed by the Respondent-Defendant, within two weeks of such communication.

(ii) The Respondent-Defendant shall be at liberty to apply to the trial court to withdraw the said amount and deposit the same towards the GST upon an undertaking that the Respondent-Defend would bring back the said amount in the event it is held that the Plaintiff is not entitled to pay GST.

(iii) The Respondent-Defendant shall handover possession of the permanent alternate accommodation in accordance with the agreement executed by and between the parties within a period of two weeks from today.

(iv) The Plaintiff shall pay the other amount as claimed by the Respondent in the letter dated 15 July 2022, subject to the decision of the trial Court.

(v) The trial court is requested to expedite hearing of the suit and make an endeavour to decide the same on or before 31 March 2024.

(vi) The Appeal stands disposed.

(vii) Interim Application also stands disposed.

(N.J.JAMADAR, J.)