

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

**APPEAL FROM ORDER NO.161 OF 2023
WITH
INTERIM APPLICATION NO.2084 OF 2023
IN
NOTICE OF MOTION NO.2825 OF 2018
IN
SMALL CAUSE SUIT NO.1015 OF 2018**

Sri Sai Nidhi Realtors Private Limited

...Appellant/
Ori. Defdt. No.2

vs.

Veluben Narendra Nandu and Others

...Respondents

Mr. Vishal Kanade a/w. Mr. Dipen Furia i/b. M/s. Shah and Furia Associates, for the Appellant.

Mr. Prashant Chawan i/b. Mr. Ravindra Chitre, for the Respondent No. 1.

CORAM : N. J. JAMADAR, J.

DATE : MARCH 29, 2023

P.C.:

1. This appeal is directed against an order dated 27th January, 2023 passed by the learned Judge, City Civil Court, Greater Mumbai in Notice of Motion No. 2825 of 2018 in Small Cause Suit No. 1015 of 2018 whereby the Notice of Motion taken out by the respondent No.1/original plaintiff came to be partly allowed thereby directing the appellant/ defendant No. 2 to pay an amount of Rs. 14,000/- per month to the respondent NO. 1/ plaintiff towards the monthly compensation for transit accommodation with arrears from August, 2018.

2. For the sake of convenience and clarity, the parties are hereinafter referred to in the capacity in which they are arrayed before the City Civil Court.

3. The appeal arises in the backdrop of the following facts :-

a] The plaintiff claimed that she was a tenant in a residential premises bearing Room No. 1, Gopal Bhuvan, situated on a plot of land bearing CTS No. 2079 to 2138 and 2139 (part) of village Ghatkopar-Kirol, Tal. Kurla, Mumbai (the suit property) at the monthly rate of Rs. 50.50/- per month. The defendant No. 1 represented to the plaintiff and other occupants that it would redevelop the suit property and provide a self-contained flat admeasuring 351 sq.ft. as and by way of permanent alternate accommodation in lieu of existing premises on ownership basis to them.

b] An agreement for grant of permanent alternate accommodation dated 30th October, 2012 came to be executed between the parties. It inter alia, provided for payment of a sum of Rs. 14,000/- per month to the plaintiff as and by way of monthly compensation towards alternate accommodation till the completion of the new building; which was to be completed within a period of 24 months. Believing the representations made in the suit agreement,

the plaintiff delivered vacant possession of the suit property to the defendant No. 1.

c] Alleging that the defendant No. 1 committed default in performance of the contract contained in the suit agreement, the plaintiff instituted the suit No. 1015 of 2018 initially against M/s. Yasodhan Developers Private Limited (M/s. Yasodhan), the defendant No. 1 seeking inter alia a direction to execute and register an agreement in terms of the agreement dated 30th October, 2012 (the suit agreement) entered into between the plaintiff and defendant No. 1, commence and complete the construction of the building at the suit property and hand over the permanent alternate accommodation in all respects in terms of the suit agreement and pay to the plaintiff the arrears of unpaid compensation as per the particulars of claim and continue to pay the recurring compensation for transit accommodation @ Rs. 14,000/- per month with periodical escalation at the rate of 20% p.a.

d] In the intervening period, pursuant to the sanction of the scheme of merger, the defendant No. 1 merged with defendant No. 2. Thereupon, the defendant No. 2 came to be impleaded as a party defendant to the suit. As defendant No. 2 professed to have terminated the suit agreement by addressing a notice dated 8th July, 2019, the plaintiff also sought relief of declaration that the

termination notice dated 8th July, 2019 was illegal, unlawful and did not bind the plaintiff.

e] In the said suit, the plaintiff took out a Notice of Motion No. 2825 of 2018 seeking inter alia a direction to the defendants to pay to the plaintiff the arrears of monthly compensation for transit accommodation in terms of the particulars of the claim (Exhibit D) with further direction to pay the recurring compensation towards transit accommodation with escalation at the rate of 2% p.a. and injunction to restrain the defendant from alienating, parting with possession of, or creating the third party rights in respect of, the project to be developed at the suit property, without attornment of the rights under the suit agreement,.

f] The defendant No. 2 resisted the Notice of Motion.

4. By the impugned order, the learned Judge, City Civil Court was persuaded to partly allow the Notice of Motion holding, inter alia, that the plaintiff having vacated the suit property in the year 2012 and constrained to make an alternate arrangement for herself, was entitled to receive a monthly compensation towards transit accommodation in accordance with the terms of the suit agreement. The learned Judge, however, declined to grant the injunction as prayed as that would entail the consequence of

impeding the entire project.

5. Being aggrieved, the defendant is in appeal.

6. I have heard Mr. Vishal Kanade, the learned counsel for the appellant and Mr. Prashant Chawan, the learned counsel for the respondent No. 1/plaintiff at some length. The learned counsel took the Court through the pleadings, documents placed on record and the impugned order.

7. Mr. Kanade, the learned counsel for the appellant/defendant No. 2 submitted that the impugned order partakes the character of granting the final relief at an interim stage for, in the event, defendants succeed in the suit, it would be impossible for the defendants to recover the amount. Mr. Kanade would thus urge the interest of both the parties can be protected if the defendant No. 2 is permitted to deposit the monthly compensation towards transit accommodation in the Court. It was further submitted that the defendant No. 2 has a fair chance to succeed in the suit as the suit agreement has been duly terminated by a notice dated 8th July, 2019. An endeavour was made to assail the enforceability of the suit agreement as it is not registered.

8. In contrast, Mr. Chawan, the learned counsel for respondent No. 1/ plaintiff submitted that the impugned order itself is a measure in balancing the equities between the parties. Mr. Chawan stoutly submitted that the plaintiff having vacated the suit property in the year 2012 itself cannot be left in the lurch. Moreover, the plaintiff has been paid the monthly compensation towards transit accommodation till the month of June, 2018. The suit agreement has thus been acted upon. At this stage, the defendants can not be permitted to turn around and question the enforceability of the suit agreement, urged Mr. Chawan.

9. Execution of agreement for permanent alternate accommodation on 30th October, 2012 between the plaintiff and defendant No. 1 is rather incontestible. The agreement inter alia provides that in lieu of the suit property, a permanent alternate accommodation would be provided to the plaintiff. The agreement also provides payment of Rs. 14,000/- per month towards monthly rent for temporary alternate accommodation. It is incontrovertible that the plaintiff believing the representations and covenants in the suit agreement delivered the possession of the room which was in her occupation to the defendant No. 1 in the year 2012 itself.

10. In the light of the aforesaid un-controverted facts, the learned Judge, City Civil Court was justified in observing that the legality and enforceability of the suit agreement were the matters for final adjudication. Likewise, the question as to whether the suit agreement has been lawfully terminated by the defendant No. 2 can be properly adjudicated at the trial.

11. Indisputably, the permanent alternate accommodation has yet not been made available to the plaintiff. It is no solace to a person who gets dis-housed on the strength of representation that a permanent alternate accommodation would be provided under a specific period and in the interregnum compensation would be paid to arrange for a temporary alternate accommodation that the sum payable towards compensation is offered to be deposited in Court.

12. In the face of the suit agreement and more importantly the plaintiff having altered her possession to her detriment, believing the representations, a strong prima facie case was made out by the plaintiff. In the context of the relative position of the parties, the elements of balance of convenience and irreparable loss tilt in favour of the plaintiff.

13. The learned Judge, City Civil Court was cautious enough to ensure that the interim order does not operate as a hindrance in the development of the project and rightly rejected the prayer for injunctive reliefs. Resultantly, no interference is warranted with a discretionary order which has been passed keeping in view the principles which inform the exercise of the discretion.

Hence, the following order.

ORDER

1] The appeal stands dismissed with costs.

2] In view of the dismissal of the appeal, the interim application also stands dismissed.

(N. J. JAMADAR, J.)