

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 303 OF 2023**

M/s. Desai Residency Pvt. Ltd.Appellant

V/s.

Mrs. Hirvatee Siddharth Shah &Respondents
Ors.

Mr. Karl Tamboly a/w. Mr. Sanjiv Sawant an Mr. Bhakti Wast i/by. Mr. Samir Suryawanshi for the Appellant.

Ms. Aseem Naphade i/by. Mr. Abhishek Deshmukh, for Respondent No.4.

Mr. Anoshak Daver a/w. Ms. Neha M. Shah i/by. Mr. Dhiren Shah, for Respondent Nos. 1 and 2.

CORAM : SANDEEP V. MARNE, J.

Dated : 19 October 2023.

P.C. :

1. Heard learned counsels for the parties.
2. The challenge in the present Appeal is to the order dated 28 February 2023 by which the City Civil Court has partly allowed the Notice of Motion No. 596/2023 in following terms :

1. The Notice of Motion No. 596 of 2023 is partly allowed with cost.

2. The defendant Nos.2 and 3 shall provide permanent alternative accommodation before or at the time of vacating the existing garage in newly constructed building in lieu of old existing garage admeasuring 130 sq.ft. And pay all the benefits mentioned in the development and Supplemental Development Agreement like other member of the garage to the plaintiff.

3.The above temporary mandatory injunction order shall be subject to final judgment and decree in the suit.

4. Rest of the relief sought is hereby refused.

5. Accordingly, the Notice of Motion No. 596 of 2023 stands disposed of.

3. After canvassing their submissions for some time, Mr. Sawant and Mr. Tamboly the learned counsels appearing for the Appellant and Mr. Daver, the learned counsel appearing for Respondent Nos. 1 and 2 would agree that the order passed by the City Civil Court on 28 February 2023 can be modified without recording reasons as under :

- (i) During pendency of the suit, Appellant shall keep premises admeasuring 150 sq.ft carpet area on the first floor of the newly constructed building unencumbered. The Appellant shall give an intimation of the exact demarcated premises admeasuring 150 sq.ft. to Plaintiffs at the time of vacation of the suit structure by them.
- (ii) During pendency of the suit, the Appellant shall pay to the Plaintiffs transit rent at the rate of Rs.20,000/- per month

from the date of handing over of possession of the suit structure.

(iii) Plaintiffs shall handover possession of the suit structure to the Appellant within a period of 20 days from today. The Statement is accepted as an Undertaking to the Court.

(iv) This arrangement shall continue to operate during pendency of the suit.

4. Considering the nature of controversy involved in the suit, the City Civil Court is requested to expedite the hearing of the suit and to make an endeavor to decide the same as expeditiously as possible and preferably within a period of one year from today. All contentions of the parties on merits are left open. Needless to say that the City Civil Court shall not be influenced by the observations made in the impugned order or in this order while deciding the suit finally.

5. With the above directions, the Appeal from Order is disposed of.

NEETA
SHAILESH
SAWANT

SANDEEP V. MARNE, J.

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