

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.612 OF 2022
WITH
INTERIM APPLICATION NO.3723 OF 2022
IN
APPEAL FROM ORDER NO.612 OF 2022

Jitendra Veerchand Jain & Anr.Appellants/Applicants
V/S

M/s. Munnalal Kesarimal
Shah & Ors.Respondents

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Mr. Ashok M. Saraogi for the Appellants/Applicants.

Mr. Kamlesh Mishra for Respondent Nos.1 to 6.

Mr. T.D. Deshmukh for Respondent No.7-MHADA.

Ms. Smita Tondwalkar for Respondent No.8-MCGM.

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CORAM: SANDEEP V. MARNE, J.

DATE : OCTOBER 04, 2023.

P.C.:

1 By this Appeal, Appellants challenge order dated 28 March 2022 passed by the City Civil Court dismissing Notice of Motion No.721 of 2022 filed for seeking temporary injunction.

2 Plaintiffs have filed L.C. Suit No.230 of 2022 inter alia to restrain the Defendants from redeveloping the building in which the suit premises are situated. The entire dispute is in respect of possession over the property being 'Front Side Premises at 1st Floor and 2nd to 4th floors

each Front side and Rear side premises of the building known as 586 situated at J.S.S. Road, Chira Bazar, Mumbai – 400 002' (**said premises**). Plaintiffs have instituted Suit (L) No.1508 of 2018 against Defendant Nos.1 to 6 seeking a declaration that they have been forcibly dispossessed from said premises and for a direction to put the Plaintiffs back into the possession of the suit premises. In that suit this Court has passed an order on 6 November 2018 directing both the parties to maintain *status quo*.

3 In the meantime, since the condition of the building deteriorated, it appears that the building has been demolished. Defendant Nos.1 to 6 are in the process of reconstructing the building by getting the plans sanctioned from the MHADA (Defendant No.7) and Municipal Corporation of Greater Mumbai (Defendant No.8). This has created a cause of action in favour of the Plaintiffs to institute L.C. Suit No.230 of 2022 before the City Civil Court seeking a restraint order against the Defendants from redeveloping the building in which the suit premises were situated. It is the apprehension of the Plaintiffs that in the event the building is reconstructed, the Plaintiffs' rights to reoccupy the suit premises in Suit (L) No.1508 of 2018 pending before this Court would be jeopardized.

4 I have heard Mr. Saraogi, the learned Counsel appearing for the Appellant and Mr. Mishra, the learned Counsel appearing for the Defendant Nos.1 to 6.

5 After having heard the learned Counsels appearing for the parties, it appears that both the parties were directed by this Court vide order dated 6 November 2018 to maintain *status quo* in respect of suit premises. The fact that the Plaintiffs filed Suit (L) No.1508 of 2018 seeking a declaration with regard to dispossession from the said premises as illegal would indicate that Defendant Nos.1 to 6 had already taken up possession of the suit property before filing of that suit. In that situation, the order of the *status quo* dated 6 November 2018 would mean that Defendant Nos.1 to 6 ought to have continued with the possession for the said premises. Unfortunately on account of deterioration of the building, the same has been demolished.

6 In this situation, instead of stopping the reconstruction of the property, it would be appropriate that reconstruction of the property is permitted and Defendant Nos.1 to 6 are also permitted to receive possession of the premises built in lieu of the said premises. This would restore the *status quo* as contemplated by order dated 6 November 2018, albeit with a change that the *status quo* would now be in respect of possession of the newly constructed premises. At the same time Defendant Nos.1 to 6 cannot be permitted to create any third party rights or parting with possession in respect of the alternate premises received in lieu of the said premises.

7 Accordingly, present Appeal is disposed of by modifying the order dated 28 March 2022 passed by the City Civil Court. The Defendant Nos.1

to 6 shall be permitted to carry out reconstruction of the building by getting the plans sanctioned from Defendant Nos.7 to 8. Defendant Nos.1 to 6 shall also be permitted to accept possession of premises granted in lieu of the said premises and to retain the said possession. Defendant Nos.1 to 6 shall not create any third party rights and/or part with possession of such newly constructed premises received in lieu of the said premises during pendency of the suit. With the above directions, the Appeal is disposed of.

8 All contentions of the parties in the suits pending before this Court as well as before the City Civil Court are kept open.

9 In view of the disposal of the Appeal, the Interim Application also stands disposed of accordingly.

(SANDEEP V. MARNE, J.)