

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

**COMMERCIAL APPEAL FROM ORDER NO.8 OF 2023
IN
NOTICE OF MOTION NO.417 OF 2022
IN
COMMERCIAL SUIT NO.24 OF 2022**

Rajpal Amarnath Yadav : Appellant (Org. Plaintiff.)
Vs.
Karmvir Intelligent Housing : Respondents
Private Limited and ors. (Original Defendants)

Mr. A. S. Pal a/w Ms. Pooja Yadav for the Appellant.
Mr. Rishikesh Soni a/w Mr. Mohd. Tausif Khan for Respondent
No.4.
Ms. Raveena Yadav for Respondent No.5.

**CORAM : DEVENDRA KUMAR UPADHYAYA, CJ. &
ARIF S. DOCTOR, J.
DATE : 08th AUGUST, 2023**

P.C. :

The captioned Appeal takes exception to an Order dated 16th March 2022 passed by the learned Judge, City Civil Court, Borivali Division, Dindoshi, Mumbai passed in the captioned Notice of Motion. By the Impugned Order, the said Notice of Motion was partly allowed and the following order was passed, viz.

- "(ii) Defendants are temporarily restrained from creating third party interest by selling or transferring New Shop No.8 to any other persons till final disposal of the Suit."*
- (iii) Rest of the prayers are refused.*
- (iv) Accordingly Notice of Motion No.417 of 2022 is disposed of."*

The Appellant had however, in the said Notice of Motion also sought for the appointment of a Court Receiver, which prayer had not been granted. The Appellant being aggrieved from the refusal of this relief, has filed the present Appeal.

2. Mr. Pal, Learned Counsel for the Appellant submitted that the Appellant was a monthly tenant in respect of Shop No.8 admeasuring 6.54 sq. mtrs (carpet area) on the ground floor of a building known as "Jalan Niwas" ("the said building") since 1954. The said building and land on which the same was situated was owned by Respondent Nos. 2 to 4.

3. On 27th October 2010 a Development Agreement came to be executed between Respondent No.1 on the one hand as Developer and Soni & Sons through its Proprietor Bhuralal Pannalal Jain (Respondent No.3 herein) in his capacity as Karta. Under the said Development Agreement, the Appellant on handing over possession of his shop was to get a shop premises on ownership basis admeasuring 6.54 sq.mtrs. carpet area

excluding the loft area on ground floor and at the same location of the said tenanted old shop in the newly constructed redeveloped building.

4. On 18th October 2017 a Permanent Alternate Accommodation Agreement was executed between Respondent No.1 as the Developer, The Appellant as the tenant and, Respondent Nos. 2 and 3 as the owners. The said Agreement contemplated that the Appellant was to be allotted Shop No. 8 on an ownership basis along with monthly compensation of Rs.21,565/- till such time as the new shop is handed over to the Appellant. Respondent No. 1 however, after a period of roughly two years stopped making payment of the monthly compensation. Additionally, the reconstruction remained incomplete.

5. It thereafter came to the Appellant's knowledge that Respondent No. 4 had put Respondent No.5 in possession of the said shop which was to be allotted to the Appellant. He submitted that the Respondents were inducting tenants/occupants into the said building even though the construction was incomplete, and no occupation certificate had been granted in respect thereof.

6. It was thus that the Appellant filed the captioned Suit.

7. Mr. Pal, the Learned Counsel appearing on behalf of the Appellant at the outset invited our attention to the Impugned Order and pointed out that while the learned Judge recorded that the Appellant had made out a strong *prima facie* case, the learned Judge had declined the prayer for appointment of Court Receiver only on the ground that Respondent No.5 was in possession of the said shop. The Learned Counsel then submitted that the conduct of the Respondents was such that if the Court Receiver was not appointed, grave and irreparable harm and injury would be caused to the Appellant as the Respondents would continue to further deal with and encumber the said Shop, thereby gravely prejudicing the rights of the Appellant. He invited our attention to the Development Agreement as also to the Permanent Alternate Accommodation Agreement and submitted that there could be no dispute to the Appellant's entitlement thereunder. He submitted that the Trial Court was also *prima facie* satisfied with the Appellant's rights under the said Agreement and had thus partially allowed the said Notice of Motion. He however, submitted that the trial court gravely erred in not considering the prejudice that would be caused to the Appellant in the event that a Court Receiver was not appointed, especially given the conduct of the Respondents.

8. Basis the above, he submitted that the balance of convenience was entirely in favour of the Appellant and this Court ought to appoint a Court Receiver in respect of the said

shop.

9. *Per contra*, Mr. Soni, the Learned Counsel appearing on behalf of Respondent No.4, submitted that Respondent No.4 had disputed the Appellant's entitlement of possession to the said shop. He submitted that Respondent No. 4 had filed an independent Suit which was also pending hearing. He submitted that the prayer for temporary injunction that had been granted more than adequately protected the Appellant's interest. He submitted that there was no question of appointing a Court Receiver since Respondent No. 5 was already in possession of the said shop and that possession could not be unsettled by the Court Receiver. He then invited our attention to the Development Agreement and submitted that infact the Appellant's name did not figure in the list of tenants and therefore the Appellant's claim itself was misconceived.

10. We have heard the Learned Counsel for the parties, perused a copy of the pleadings as also the relevant documents annexed to the Plaint, and which have been relied upon by the Parties. We find that the Trial Court, after carefully considering the same, has come to the conclusion that the Appellant has made out a strong *prima facie* case. Admittedly, these findings have not been challenged or questioned by the Respondents.

11. Additionally we find that there is no substance in the contention of Respondent No.4 that the Appellant is not entitled to the said shop, since the Appellant's name does not figure in the list of tenants for three reasons viz. (a) the Trial Court has considered the documents including the Development Agreement and only thereafter came to a conclusion as to the Appellant's *prima facie* entitlement; (b) the order of the Trial Court has not been challenged by Respondent No.4; and (c) that Respondent No. 2 and 3 are signatories to the said Permanent Alternate Accommodation Agreement. Hence, we find that would not lie in the mouth of the Respondents to, at this stage and in these circumstances, question the entitlement of the Appellant.

12. Now coming to the prayer sought for by the Appellant, given the *prima facie* conclusion reached by the Trial Court with which we fully concur, a strong *prima facie* case has indeed been made out by the Appellant for appointment of Court Receiver. We find that the Respondents' conduct in dealing with the property in the manner which has been done would certainly prejudice the rights of the Appellant in the event the Appellant succeeds in the Suit. Therefore, we deem it appropriate, at this stage, in addition to temporary injunction granted by the Trial Court, to also appoint a Court Receiver to take formal possession of the said shop. Hence, Mr. Ramchandra B. Yadav, 7A, Keshav Bhavan Building, N. B. Road, Chincholi Village, Malad (W), Mumbai - 400064 (Mobile No.9869515624) is appointed as

Court Receiver. The costs, charges and the expenses of the Court Receiver shall be borne by the Appellant and shall be subject to the outcome of the Suit. The Court Receiver may do so on the usual terms. We also find that given the fact that this is a commercial premises from where the Appellant earns his livelihood it is fit to expedite the hearing of the present Suit, and it is therefore accordingly expedited.

13. The Appellant made a grievance that despite the fact that no Occupation Certificate has been granted in respect of the said building and that the said building is presently incomplete, the Respondents (the Defendants in the Suit) are dealing with and using the said building. This is not an inquiry that we can go into in these proceedings. However, the Appellant can always make this grievance before the appropriate authority, should the Appellant so choose to.

14. With these directions the captioned Appeal is accordingly disposed of. The Impugned Order stands modified only to the extent stated above.

(ARIF S. DOCTOR, J.)

(CHIEF JUSTICE)