

Prajakta Vartak

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

**APPEAL FROM ORDER NO. 894 OF 2019
IN
INJUNCTION APPLICATION EXHIBIT 5
IN
REGULAR CIVIL SUIT NO. 656 OF 2018**

Devchand Popatlal Dedhia ..Appellant
Vs.
Kantilal M. Bauva @ Shah & Ors. ..Respondents

Mr. G. S. Godbole with Mr. Vishal Kanade i/b. Mr. M. P. Jagani for Appellant.
Mr. Atul Damle, Senior Advocate i/b. Mr. Rohan Darandale for Respondent No.1.

**CORAM : G.S. KULKARNI, J.
DATE : FEBRUARY 15, 2023**

P.C.:

1. This appeal arises from an order dated 04 June, 2019 passed by the learned Civil Judge, Senior Division Thane, whereby an application as filed by the appellant/plaintiff below Exhibit 5 praying for a temporary injunction was rejected. The dispute between the parties has arisen under the redevelopment of the premises of respondent no.2-society. The appellant/ plaintiff makes a claim in respect of shop premises of an area admeasuring 412 sq. ft. (carpet). Respondent no.1 has disputed such

entitlement of the appellant/plaintiff. The rival contentions of the parties on the issue of temporary injunction have been gone into by the learned trial Judge whereby the temporary injunction application of the appellant/plaintiff has been rejected by the impugned order. The suit itself is of the year 2018. The impugned order was passed almost about four years back. In the intervening period, there are certain developments, in as much as construction of the redeveloped premises is completed and an Occupation Certificate has also been granted by the Thane Municipal Corporation. The permanent alternate accommodations are now ready to be occupied by the members of the respondent no.2-society, which according to the appellant/plaintiff, would include such premises to be allotted to him.

2. After the proceedings were argued for some time, considering such subsequent developments, Mr. Godbole, learned counsel for the appellant/plaintiff would suggest that as an interim measure and pending the adjudication of the suit, respondent no.1 put the appellant/plaintiff in possession of the tenement being offered to the appellant/plaintiff. Mr. Godbole states that the appellant/plaintiff would enter into a permanent alternate accommodation agreement, similar to the one entered with the other members of the society. He submits that the appellant/ plaintiff

entering into such agreement shall be without prejudice to the rights and contentions of the appellant/ plaintiff and also of the respondents in the pending suit.

3. Mr. Damle, learned senior counsel for respondent no.1, on instructions of his client who is present in the Court, is agreeable for such course of action. He however submits that in the event there is any objection in regard to the original agreement as entered by the appellant/ plaintiff with his vendor namely Shri. Patki on any deficit stamp duty, the same would be required to be cleared by the appellant/ plaintiff, so that there is no impediment on the permanent alternate accommodation agreement being appropriately executed and stamped.

4. In the aforesaid circumstances, in my opinion, the suggestion as made by Mr. Godbole and as fairly accepted by Mr. Damle needs to be accepted as an appropriate course of action which the parties would intend to adopt, pending the adjudication of the suit.

5. The appeal is accordingly disposed of accepting the above arrangement as agreed between the parties. Necessary steps in that regard be taken by the parties within a period of four weeks from today.

6. All contentions of the parties on merits of the suit are expressly kept open.
7. Disposed of in the above terms. No costs.
8. Needless to observe that as soon as permanent alternate accommodation agreement is executed, the appellant/plaintiff be put in possession.
9. Interim application would not survive. It is accordingly disposed of.

[G.S. KULKARNI, J.]