

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.975 OF 2022
WITH
INTERIM APPLICATION NO.19086 OF 2022**

Umanath Devraj Shenoy and Ors. ... Appellants
versus
Shreeji Construction & Ors. ... Respondents

Mr. Shreepad S. Murthy i/by Mr. Abhishek Patil for Appellants.
Mr. Vishal Kanade i/by Mr. D.D.Singh for Respondents.

CORAM: N.J.JAMADAR, J.

DATE : 16 MARCH 2023

P.C.

1. The challenge in this Appeal is to an order dated 18 August 2022 in Notice of Motion No.231 of 2020, whereby the learned Judge, City Civil Court, Dindoshi, Mumbai, was persuaded to allow the Notice of Motion in terms of prayer clauses (a), (d) and (e).

2. By the said Notice of Motion, the Plaintiffs/Respondents herein had sought stay to the effect, implementation, operation and execution of the Consent Decree in S.C.Suit No.714 of 2014 and to restrain the Defendants from entering upon the suit property.

3. In the context of the allegation that the Plaintiffs in the said Suit, in which Consent decree was passed, were not having any right, title and interest in the land beneath the suit shops and the same was never sold by the owner of the shop, the

learned City Civil Judge was persuaded to grant stay to the execution of the Consent Terms. The Appellants/Defendants have come in Appeal.

4. By the impugned order, the City Civil Court has also directed the Plaintiffs to deposit compensation regularly as per clause 9 of the Consent Terms in Suit No.714 of 2014. Relevant part of Clause 9 reads as under :

“9. The Defendants agreed and undertake to pay the Plaintiffs a total aggregate amount of Rs.60,000/- per month i.e. sum of Rs.15,000/-to each Plaintiff as interim alternate accommodation charges. The Defendants have handed over 11 months advance cheques to the Plaintiffs. The said alternate accommodation charges shall be increased @ 10% after every 11 months.”

5. During the course of the submissions, the Court was informed that there are arrears to the tune of Rs.83,56,570/- towards the interim alternate accommodation charges.

6. The primary issue involved in the Suit is the entitlement of the Defendants to the alternate accommodation. It is indisputable that the premises which the Defendants were occupying have been handed over to the Plaintiffs and demolished. Building has also been erected.

7. In the circumstances, the learned Counsel for the Respondents/Plaintiffs, on instructions, submits that the Respondents/Plaintiffs would not alienate and/or create any third party rights in respect of the four shops described in paragraph 7 of the Consent Terms and would also pay arrears of interim

alternate accommodation charges to the Appellants/Defendants.

8. In view of the aforesaid submissions, without interfering with the order passed by the learned Judge, City Civil Court, Dindoshi, Mumbai, the rights of the parties can be further worked out in the interregnum as under :

(i) The statement made on behalf of the Respondents/Plaintiffs that they will not alienate and/or otherwise create third party rights and interest in the four shops described in paragraph No.7 of the Consent Terms is accepted as an undertaking to the Court.

(ii) The Respondents/Plaintiffs shall deposit a sum of Rs.83,56,570/- in the City Civil Court, Dindoshi, Mumbai in four monthly installments i.e. three installments shall be of Rs.20 Lakhs each and the fourth installment of Rs.23,56,570/-. The first installment shall be paid on or before 15 April, 2023.

(iii) The Appellants/Defendants shall be at liberty to apply for the withdrawal of the aforesaid amounts including the amount deposited by the Respondents/Plaintiffs in terms of the order passed by the Learned Judge, City Civil Court, Dindoshi, Mumbai.

(iv) If such an application is made by the Appellants/Defendants, the same shall be decided expeditiously. The learned Counsel for the Respondents/Plaintiffs undertakes that the Respondents/Plaintiffs will not seek adjournment in connection with the hearing of the said Application.

- (v) All contentions of the parties are kept open for consideration before the City Civil Court, Dindoshi, Mumbai.
- (vi) In the circumstances of the case, the learned Judge, City Civil Court, Dindoshi, Mumbai, is requested to adjudicate the Suit as expeditiously as possible.
- (vii) The Appeal accordingly stands disposed.
- (viii) Interim Application also stands disposed.

(N.J.JAMADAR, J.)