

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

**APPEAL FROM ORDER NO. 752 OF 2023
WITH
INTERIM APPLICATION NO.15241 OF 2023
IN
APPEAL FROM ORDER NO. 752 OF 2023**

Arvinder Singh Chandok

....Appellant

Versus

Gurpreet Kaur Chandok & Ors.

....Respondents

...

Mr. Aneem Naphade a/w Mr. Bharat Jain, Mr. Anant Ratnapurkhi, Mr. Punit Agarwal i/b M/s. IC Legal, for Appellant/Applicant.

Mr. Rushabh Sheth a/w Mr. Sujit Lahoti i/b M/s. Sujit Lahoti & Associates for Respondent No.1.

Mr. Aquil G. Kalawadia, for Respondent No.2.

Ms. Pushpa D. Thapa i/b Ms. Indrayani M. Kopurkar for Respondent No.3.

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CORAM : SANDEEP V. MARNE, J.

DATE : SEPTEMBER 20, 2023

P.C.:

1. By this Appeal, the Appellant-husband challenges order dated 25 July 2023 passed by City Civil Court partly allowed Notice of Motion No.1164 of 2023. By its order the City Civil Court has directed Defendant No.2-Developer to pay the transit rent and other monetary benefits as are payable to the other members of Defendant No.1-Society to the Plaintiff-wife. The Developer has also been directed to handover the possession of alternate permanent accommodation to the Plaintiff-wife.

2 The Appellant-husband is aggrieved by the order dated 25 July 2023 passed by the City Civil Court. Mr. Naphade, the learned Counsel appearing for the Appellant-husband would submit that the Appellant-husband is undoubtedly the owner of the flat and his ownership rights are not disputed in any manner by the Plaintiff-wife. He would further submit that even the agreement for permanent alternate accommodation has been executed by the Defendant No.2-Developer in the name of Appellant-husband. That Plaintiff-wife's Motion for execution of permanent alternate accommodation agreement has been rejected by the City Civil Court and no relief is granted by this Court in Appeal from Order filed by her in this Court. He would further submit that the Plaintiff-wife has an independent flat at Lokhandwala Complex and that she has a alternate residence after demolition of the building in question i.e. the suit flat. He would further submit that the Appellant-husband is unemployed and the order of the City Civil Court is such that the entire amount of rent is being granted exclusively in favour of the Plaintiff-wife. He would submit that the City Civil Court ought to have balanced the equities between the parties by atleast granting some share in favour of the Appellant-husband.

3 Mr. Naphade, further submit that the City Civil Court does not have jurisdiction to entertain the suit filed by the Plaintiff-wife. In this regard he places reliance on section 7 of the Family Courts Act, 1984. He would also rely upon the judgment of the Apex Court in *K.A. Abdul Jaleel vs. T.A. Shahida*, (2003) 4 SCC 166.

4 Mr. Naphade, would further expresses an apprehension that the finding recorded by the City Civil Court in paragraphs 25 and 26 of the impugned order are such that the Plaintiff-wife is likely to claim right and interest in the flat when admittedly the ownership of the Appellant-husband in respect of the flat has not been disputed in any manner by the Plaintiff-wife. He would further submit that reliance by the City Civil Court on the judgment of this Court in *Maniar Associates LLP vs. Vijay Niwas Co-op Hsg Soci Ltd and others* (Commercial Arbitration Petition No.4301 of 2022 decided on 16 March 2022) is totally erroneous as the fact situation in that case is totally different.

5 Per contra, Mr. Sheth, the learned Counsel appearing for the Plaintiff-wife would oppose the Appeal and support the order passed by the City Civil Court.

6 Having considered the submissions canvassed by the learned Counsels appearing for the parties, it is seen that the flat in question is undoubtedly owned by the Appellant-husband. The Appellant-husband and the Plaintiff-wife have separated since the year 2009. It is an admitted position that the Plaintiff-wife has been in possession of the flat since the year 2009. The building in which the suit flat is situated has been taken up for redevelopment by the Defendant No.1-Society and Defendant No.2-Developer is carrying out the work of redevelopment. The City Civil Court, in these circumstances has taken note of the fact that the Plaintiff-wife would get dispossessed upon

demolition of the building. The Defendant No.2-Developer has executed the permanent alternate accommodation agreement in favour of the Appellant-husband, principally because he is an undisputed owner in respect of the suit flat. If the City Civil Court was not to pass the order of temporary injunction the Defendant No.2-Developer would have paid the transit rent in the name of the Appellant-husband. Similarly upon completion of the construction of the building, the possession of permanent alternate accommodation would have also been handed over by the Defendant No.2-Developer to the Appellant-husband. This would have resulted in complete dispossession of the Plaintiff-wife from the suit flat, where she has been admittedly residing since the year 2009.

7 The order passed by the City Civil Court, in my view, protects the interests of the Plaintiff-wife. By utilizing the transit rent, she will be in a position to seek another transit accommodation till the building is reconstructed. After construction of the building is completed, the Plaintiff-wife will be in a position to reside in the permanent alternate accommodation. Thus the position between the parties, as has been standing since the year 2009, will continue henceforth on account of the order passed by the City Civil Court.

8 No doubt the Appellant-husband is the owner of the suit flat. If he wants to exercise his rights to dispossess the Plaintiff-wife from the said flat, he will have to file appropriate proceedings under the provisions of the Family Courts Act. Till she is dispossessed in a lawful manner, mere redevelopment of

the building cannot be used as a pretext to seek indirect eviction of the Plaintiff-wife from the flat. Reliance of Mr. Naphade, on provisions of section 7 of the Family Courts Act would not cut any ice in view of the fact that reliefs are also sought by the Plaintiff-wife against Defendant No.1-Society and the Defendant No.2-Developer. In the present case, they cannot be impleaded as parties in proceedings if filed before the Family Court. Also of relevance is the fact that the objection of jurisdiction has not been raised before the City Civil Court and is sought to be raised for the first time in the present Appeal. Therefore, reliance of Mr. Naphade on the judgment of the Apex Court in *K.A. Abdul Jaleel* (supra) would not assist the case of the Appellant.

9 Considering the entire conspectus of the case, I am of the view that the City Civil Court's order would sufficiently protect the interests of the Plaintiff-wife who is sought to be dispossessed on account of redevelopment of the building. No interference in the order passed by the City Civil Court is warranted. The City Civil Court has already clarified in paragraph 4 of the operative portion of the order that the rights and interest of the Plaintiff-wife and Appellant-husband in respect of the permanent alternate accommodation will be decided at the time of final hearing of the suit. It is once again clarified that the observations made by the City Civil Court in paragraphs 25 and 26 of its order shall not be construed to mean as if any right, title or interest is conferred upon the Plaintiff-wife in respect of the suit flat. The said findings are recorded only for the purpose of determining the Plaintiff-wife is entitled to grant of temporary injunction. With the above clarification, the Appeal is disposed of.

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

(SANDEEP V. MARNE, J.)