

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

APPEAL FROM ORDER NO.769 OF 2023

Kanti Harjivandas Amin

....Appellant

Versus

Ankit Enterprises

a firm of Builder Developer & Ors.

....Respondents

...

Mr. Bharat Joshi, for Appellant.

Mr. Sharad Bansal a/w Mr. Karamsingh Shekhawat and Mr. Yogesh Salunke for Respondent No.1.

Mr. R.Y. Sirsikar, for Respondent Nos.5 and 6-MCGM.

...

CORAM : SANDEEP V. MARNE, J.

DATE : SEPTEMBER 26, 2023

P.C.:

1. By this Appeal, Appellant challenges order dated 18 July 2023 dismissing Notice of Motion No.1111 of 2020.

2 Notice of Motion No.1111 of 2020 was filed by Appellant-Plaintiff seeking following reliefs:

“(a) This Hon'ble Court be pleased to frame Issues in the Suit under Order XIV, Rule 2 of the C.P.C. as per Exhibit A hereto as pleadings are complete.

(b) This Hon'ble Court be pleased to treat the affidavit of evidence of PW-1, Plaintiff's witness, affirmed on 09/10/2014 filed along with compilation of documents and duly exhibited as proved, as Affidavit of Evidence of the Plaintiff and compilation of documents and Exhibits in the suit.

- (c) The hearing of Notice of Motion No.1458 of 2012 be tagged along with the final hearing of the suit.
- (d) The ad-interim order of injunction dated 09/05/2012 in Notice of Motion No.1458 of 2012 extended from time to time till date be extended as interim order pending hearing and final disposal of the suit.
- (e) Ad-interim relief in terms of prayers (c) and (d) be granted.
- (f) Cost of the Notice of Motion be provided for.
- (g) Such other and further reliefs as deemed fit and proper in the nature and circumstances of the case be granted.”

3 The learned Counsel appearing for the Appellant would submit that so far as rejection of prayer clauses (a), (b) and (c) in Notice of Motion No.1111 of 2020 is concerned, the Appellant has no grievance. He would submit that rejection of prayer clause (d) results in vacation of ad-interim order passed on 9 May 2012 in Notice of Motion No.1458 of 2012. He would submit that there is no specific order passed by the City Civil Court by which the *ad-interim* order was consciously vacated. He would submit that *ad-interim* order has not been extended by the City Civil Court and that there is no specific reason for non-extension of the ad-interim order.

4 The learned Counsel appearing for Respondent No.1 would oppose the Appeal and submit that on account of non-continuation of the *ad-interim* injunction and on account of passing of order dated 18 July 2023 by the City Civil Court, the Respondent No.1 has already handed over possession of Unit No.701 in favour of Cosmos-Sunshine (Maniar Bhavan) Co-operative

Housing Society Limited. He would submit that since the possession is already handed over to the Society, no purpose will be served in continuing the *ad-interim* order which had restrained Respondent No.1 from creating third party rights or parting with possession of Unit No.701.

5 I have considered the submissions canvassed by the learned Counsels appearing for the parties.

6 It appears that by order dated 9 May 2012 the City Civil Court had granted *ad-interim* relief in terms of prayer clause (a) of Notice of Motion No.1458 of 2012. Prayer clause (a) of Notice of Motion No.1458 of 2012 reads thus:

“a) pending hearing and final disposal of this Suit, the Defendant No.1, its servants, agents, officers, employees and persons claiming through them be restrained by a temporary order and injunction of this Hon’ble Court from inducting any third party, parting with possession, creating third party rights, dealing with disposing off, alienating any part of portion of Flat No.701, 7th floor, Cosmos-Sunshine (Maniar Bhavan), 3rd Panjrapole Lane, Mumbai – 400 004;”

7 Thus by way of *ad-interim* order dated 9 May 2012 the Respondent/Defendant No.1 was restrained from creating third party rights or parting with possession of Unit No.701. It appears that the said *ad-interim* order continued to operate upto 30 March 2020. Thereafter on account of Covid-19 pandemic and disruption of Court proceedings, it appears that the Suit and the Motion got adjourned without passing of any order. On this

count, it appears that the *ad-interim* order which was granted on 9 May 2012 has not been continued beyond 30 March 2020.

8 It appears that the Appellant-Plaintiff filed Notice of Motion No.1111 of 2020 on 26 February 2020 seeking various reliefs as reproduced hereinabove. In prayer clause (d) he prayed for continuation of *ad-interim* order of injunction dated 9 May 2012 till final disposal of the suit. Instead of filing a separate application for continuation of *ad-interim* order beyond 30 March 2020, it appears that the Appellant-Plaintiff pressed prayer clause (d) in Notice of Motion No.1111 of 2020 for continuation of the *ad-interim* order which had expired on 30 March 2020. However considering the manner in which the prayer clause (d) in Notice of Motion No.1111 of 2020 was couched, the City Civil Court has proceeded to reject even prayer clause (d).

9 It is undisputed position that Notice of Motion No.1458 of 2012 in which *ad-interim* injunction was granted on 9 May 2012 is still pending. *Ad-interim* relief granted on 9 May 2012 has not been vacated by recording any reasoned order. In such circumstances, it would be appropriate that the said *ad-interim* relief granted on 9 May 2012 is continued till decision of Notice of Motion No.1458 of 2012.

10 Coming to the aspect of letter dated 6 September 2023 by which Respondent No.1 has allegedly handed over possession of Unit No.701 in favour of Cosmos-Sunshine (Maniar Bhavan) Co-operative Housing Society

Ltd., the exact purpose for which the said Unit is handed-over to the Society is unknown. The learned Counsel for Respondent No.1 has submitted that the Society is intending to use the said Unit No.701 for its office. Even letter dated 6 September 2023 says so. Though the Society is not impleaded as party to the suit or to the present Appeal, the learned Counsel appearing for the Appellant would submit that the Defendant/Respondent No.2 was the Chief Promoter of the Society and was impleaded as such at the time of filing of the suit. Be that as it may, since Unit No.701 has not been sold, transferred or given in possession of any third party, it is appropriate that *status quo* is maintained in respect of Unit No.701 till decision of Notice of Motion No.1458 of 2012.

11 Accordingly, the present Appeal is disposed of by directing that the *ad-interim* order of injunction dated 9 May 2012 passed in Notice of Motion No.1458 of 2012 shall continue to operate till the decision of Notice of Motion No.1458 of 2012. Till decision of Notice of Motion No.1458 of 2012, *status quo* shall be maintained in respect of Unit No.701.

12 With the above directions, the Appeal is disposed. No order as to costs.

(SANDEEP V. MARNE, J.)