

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.672 OF 2023
WITH
INTERIM APPLICATION NO.15866 OF 2023

Mrs. Anushree Anil Pilvankar & Anr. ..Appellants

Versus

Mr. Imtiyaz Abubakar Rajapkar ..Respondent

Mr. Aseem Naphade a/w Deepak Chitnis, Abhilash Chitre & Sonali Dalvi i/by Deepak Chitnis-Chiparikar, for the Appellants.

Mr. Amardev Uniyal a/w B. L. Mangale & Anand Oka, for the Respondent.

CORAM : SANDEEP V. MARNE, J.

DATE : 30th NOVEMBER, 2023

PC.

1. By this appeal, the appellants challenge the order dated 2nd March, 2023 rejecting Notice of Motion No.3928 of 2022 filed for grant of benefits arising out of redevelopment of the building. In the Motion, appellants sought following reliefs :-

“(a) That this Hon’ble Court be pleased to allow the Plaintiffs to join the Respondents abovenamed as party Defendant Nos.2 and 3 to the above suit.

(b) That pending the hearing and final disposal of the above suit this Hon’ble Court be pleased to direct the Respondent No.2 to deposit the rent @ Rs.25000/- (Rupees Twenty Five Thousand Only) per month with the rent increase @ 10% per month after eleven months till completion and handing over possession of the new flat in this Hon’ble Court and also direct to deposit a sum of Rs.6,50,000/- (Rupees Six Lakhs Fifty Thousand Only) by

way of corpus fund which is agreed to be paid in accordance with clause No.7(c) of the agreement for development dated 10th August 2022 in this Hon'ble Court and also deposit a sum of Rs.15000/- (Rupees Fifteen Thousand Only) being the transportation charges till the disposal of the above suit in this Hon'ble Court.

(c) That pending the hearing and final disposal of the above suit this Hon'ble Court be pleased to pass a permanent order of injunction thereby restraining the Respondents, their servants, agents and all persons claiming through, by and/or under him from handing over the possession of Flat No._____admeasuring about 560 sq. feet carpet area equivalent to 585 sq. feet RERA carpet area to the Defendant No.1 in New building of Shraddha Co-op Housing Society Ltd.

(d) That pending the hearing and final disposal of the above suit, this Hon'ble Court be pleased to appoint the Court Receiver, High Court, Mumbai or some other fit and proper person as a Receiver under order XI, Rule 1 of Code of Civil Procedure 1908 of the said new premises being Flat No._____ admeasuring about 560 sq. feet carpet area equivalent to 585 sq. feet RERA carpet area in the new building of Shraddha Co-op Housing Society Ltd., agreed to be provided as a permanent alternate accommodation under the said agreement for development dated 10th August 2022 till the disposal of the above suit.

(e) Ad-interim reliefs in terms of prayers (a) to (c) above.

(f) For costs of this Notice of Motion be provided for.

(g) For such further and other reliefs as in the nature and circumstances of the case, as this Hon'ble Court may deem fit and proper.”

2. By separate order passed on 2nd March, 2023, the City Civil Court has rejected Notice of Motion No.2686 of 2021 seeking temporary injunction to restrain defendant from interfering with possession of plaintiffs over the suit flat and for restraining the defendant from creating third party rights in the suit flat. The order dated 2nd March, 2023 passed in Notice of Motion No.2686 of 2021 is upheld by this Court by passing a separate order in Appeal from Order No.676 of 2023. Considering the reasons recorded while rejecting Appeal from Order No.676 of 2023, the prayer sought for by the plaintiffs in Notice of Motion No.3928 of 2022 cannot be granted. The defendant is the owner and occupier of the suit flat. He alone must receive the benefits flowing out of redevelopment of the building. Till determination of plaintiffs' rights to seek specific performance of the MOU dated 1st January, 2019, the benefits of redevelopment cannot be granted in favour of the plaintiffs. The City Civil Court has rightly rejected Notice of Motion No. 3928 of 2022.

3. The appeal, being devoid merits, is dismissed.

4. Needless to state that the City Civil Court shall decide the suit on its own merits without being influenced by any of the observations made in the present order. Pending interim application also disposed of.

[SANDEEP V. MARNE, J.]