

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.16308 OF 2023
IN
APPEAL FROM ORDER (STAMP) NO.28031 OF 20231
WITH
APPEAL FROM ORDER (STAMP) NO.28031 OF 20231
WITH
INTERIM APPLICATION (STAMP) NO.28033 OF 2023
IN
APPEAL FROM ORDER (STAMP) NO.28031 OF 20231

...

Nisha Prasad nee @ Nisha

Narayan Prasad

....Appellant/Applicant

V/S

R. Sridhar & Anr.

....Respondents

...

Mr. Vishal Kanade a/w Mr. Vishal Maheshwari, Ms. Kamini Pansare, Ms. Shrishty Punjabi and Mr. Mihir Beradia i/b M/s. V.M. Legal for the Appellant/Applicant.

Mr. Vedchetan Patil i/b Mr. Chirag J. Mehta for Respondent Nos.1 and 2.

Mr. Parul Vedak for the Respondent No.3.

...

CORAM: SANDEEP V. MARNE, J.

DATE : DECEMBER 18, 2023.

P.C.:

1 Heard the learned Counsel appearing for the parties. The operative portion of the impugned order dated 25 August 2023 passed by the City Civil Court reads thus:

‘1. The notice of motion No.3948 of 2022 stands allowed.

2. Pending the final hearing and disposal of the suit the defendant No.2 Nisha Prasad is directed to remove herself along with her belongings from the suit premises i.e. Flat No.1200, 12h Floor, Supreme Epitome, Opp. Cubic Mall, Dr. C. G. Road, Chembur, Mumbai within a period of eight weeks from today and shall not cause any disturbance or interference in the plaintiffs use, occupation, enjoyment and possession of the suit premises in any manner.

3. The defendant No.2 is free to shift at 1003, 10th Floor, Satyam Springs Off, Deonar, Chembur as offered by the defendant No.1 or she may take any other suitable accommodation for her residence, the rent/license fee of which shall be paid by defendant No.1, till the decision of her application made under the provisions of Protection of Women From Domestic Violence Act, 2005 by the concerned Court.’

2 Mr. Kanade, the learned Counsel appearing for the Appellant would contend that the tenure of leave and license agreement in respect of flat No.1003, 10th floor, Satyam Springs, Chembur had expired on 21 August 2023 before the City Civil Court passed the order on 25 August 2023.

3 On the contrary, it is the contention of the learned Counsel appearing for Respondent No.1 that the tenure of leave and license agreement has expired on 31 August 2023.

4 Be that as it may, it is an admitted position that as of now the tenure of leave and license agreement in respect of flat No.1003 has

expired and the Defendant No.1-husband has handed over possession of flat No.1003 to the licensor.

5 The second part of direction No.3 passed by the City Civil Court provides for the choice to the Appellant to take any other suitable accommodation for her residence, rent/license fees whereof is to be paid by the Defendant No.1-husband.

6 Mr. Kanade, the learned Counsel appearing for the Appellant would submit that upon provision of accommodation in the vicinity of the suit flat, the Appellant is willing to vacate the suit flat.

7 The learned Counsel appearing for the Defendant No.1-husband, after taking instructions from her client, makes a statement that Defendant No.1-husband is willing to make an arrangement for flat of one bed room, hall, kitchen in Chembur area similar to flat No.1003 for residence of the Appellant. Alternatively she submits that the Defendant No.1-husband is willing to provide an amount of Rs.30,000/- per month towards license fees for one BHK flat at Chembur or any other place of choice of the Appellant.

8 In view of the consensus prevailing between the parties, the Appeal is disposed of by passing the following order:

ORDER

i) Within three weeks from today the Appellant shall choose a flat rent/license fees of which does not exceed Rs.30,000/- and give an intimation of the choice so made to Defendant No.1-husband. Within one week of receipt of such intimation, the Defendant No.1-husband shall execute leave and license agreement in respect of such flat by paying deposit and license fees. He shall continue to pay license fees of that flat till decision of the application under the provisions of the Protection of Women from Domestic Violence Act by the concerned Court. Within one week of receipt of possession of such licensed accommodation, the Appellant shall vacate the suit flat.

ii) In the event if the Appellant is unable to make a choice for licensed accommodation as directed above within the stipulated time and/or failure on the part of the Defendant No.1-husband to execute the license agreement or to deliver possession of the licensed accommodation to the Appellant, the Defendant No.1-husband shall start paying amount of Rs.30,000/- per month to the Appellant towards license fees. Upon Defendant No.1-husband commencing payment of Rs.30,000/- to Appellant, she shall vacate the suit premises within one week of first payment.

iii) The above arrangement shall be without prejudice to the rights and contentions of the parties in the Appeal.

9. With the above directions, the Appeal from Order is disposed of.

10 In view of the disposal of the Appeal from Order, both the Interim Applications do not survive and the same are disposed of accordingly.

s

(SANDEEP V. MARNE, J.)