

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 1086 OF 2022
WITH
INTERIM APPLICATION (St.) NO. 31960 OF 2022

Kishore Jamanadas Morzaria & Anr.

... Appellants/
Applicants

Versus

Pavanalayam Cooperative Housing Society Ltd.,
through its Hon. Secretary N.M. Gangadharan & Ors.

... Respondents

Mr. Bipin J. Joshi a/w. Mr. Bhavesh Joshi , Ms. Sakshi Agarwal for the
appellants.

Mr. Vinod N. Naik i/b. M/s. V.N. Naik & Co. for respondent no. 1.

Mr. S.R. Tejpal a/w. Mr. Dushyant Tejpal i/b. Tejpal & Co. for
respondent no. 2.

Ms. Samiksha Gopale i/b. B.G. Saraf for respondent no. 3.

CORAM: G. S. KULKARNI, J.
DATED: 5 January 2023

P.C.

1. Not on board. Upon mentioning, taken on board on a praecipe as
moved on behalf of the appellants.

2. Heard Mr. Joshi, learned counsel for the appellants, Mr. Naik, learned
counsel for respondent no. 1, Mr. Tejpal, learned counsel for respondent no. 2
and Ms. Gopale for respondent no. 3.

3. This Appeal is directed against an order dated 20 October, 2022 passed
by the learned Judge of the City Civil Court on Notice of Motion No. 2478 of

2022 in S.C. Suit No. 1548 of 2022 filed by respondent no. 1- Pavanalayam Cooperative Housing Society Ltd. (for short “**the Society**”). The operative part of the impugned order is required to be noted, which reads thus:

“O R D E R

1. *Notice of Motion No. 2478/2022 is made absolute in terms of prayer clause (d) and (e).*
2. *The Court Receiver shall be appointed for taking possession of the suit flat from defendant no. 1 and to hand over the suit flat to the plaintiff society for demolition for the purpose of self redevelopment of the suit building.*
3. *The plaintiff shall pay fees of Rs.10,000/- to the Court Receiver for discharging above said duties.*
4. *Proceeding of N/M. No. 2478/2022 is closed.”*

4. By the above order, prayer clause (d) and (e) of the Motion have been granted, which reads thus:

“(d) Pending hearing and final disposal of the above suit, this Hon’ble Court be pleased to appoint Court Receiver, High Court, Mumbai or any other fit person as this Hon’ble Court deems fit in the interest of justice as Receiver of the suit premises with all powers under Order XL of the Code of Civil Procedure, 1908, including the power to take possession of the suit premises from the Defendants and hand it over to the plaintiff society for demolition against the plaintiff’s undertaking of handing over permanent alternative accommodation to the Court Receiver as well as making payment of all entitlements like transit accommodation, shifting charges, of the defendants in respect of the suit premises;

(e) Pending hearing and final disposal of the above suit, the defendant either himself or through his servants, agents, administrators, representatives or assignees be restrained by an order of injunction of this Hon’ble Court from creating any third party rights/title or interest or parting with the possession of the suit premises to any third parties.”

5. The case of the plaintiff/Society before the trial Court was in regard to respondent no. 2-Ms. Bhavini Jhaveri not cooperating in handing over Flat no. 4 to the Society for the purpose of redevelopment. It is stated that the Society is undertaking a self-redevelopment. On such cause of action, the suit in question came to be filed by the Society *inter alia* praying for the following reliefs:

“(a) That this Hon’ble Court be pleased to declare that the defendants are jointly and/or severally liable to abide by the Self Redevelopment Project of the “Dwarka” building situated at Plot No. 10, Vallabh Baug Lane Extension, Garodia Nagar, Ghatkopar (East), Mumbai – 400 077 as per development in accordance with plan;

b) That this Hon’ble Court be pleased to declare that either the defendant no. 1 or defendant nos. 2 and 3 are entitled to permanent alternate accommodation in lieu of said flat as well as transit accommodation and shifting charges as per the Society Resolution dated 1 April, 2021, subject to outcome of the appeal proceedings, if any instituted before the Hon’ble High Court against the said judgment and decree dated 16 March, 2022;

c) That this Hon’ble Court be pleased to declare that the defendants are jointly and severally liable to handover the possession of the suit premises Flat No. 4, Pavanalayam CHS Ltd., Plot No. 10, Vallabh Baug Lane Extension, Garodia Nagar, Ghatkopar (East), Mumbai – 400 077, forthwith to the Society for demolition against the payment of transit accommodation, as per Society Resolution dated 1 April, 2021;

d) Pending hearing and final disposal of the above suit, this Hon’ble Court be pleased to appoint Court Receiver, High Court, Mumbai or any other fit person as this Hon’ble Court deems fit in the interest of justice as Receiver of the suit premises with all powers under Order XL of the Code of Civil Procedure, 1908, including the power to take possession of the suit premises from the Defendants and hand it over to the plaintiff society for demolition against the plaintiffs undertaking of handing over Permanent Alternative Accommodation to the Court Receiver as well as

making payment of all entitlements like transit accommodation, shifting charges of the defendants in respect of the suit premises;

(e) Pending hearing and final disposal of the above suit, the defendants either himself or through his servant, agents, administrators, representatives or assignees be restrained by an order of injunction of this Hon'ble Court from creating any third party rights/title or interest or parting with the possession of the suit premises to any third parties;

(f) That Interim/Ad-interim reliefs in terms of prayer clauses (d) and (e) hereinabove."

6. In such suit, Notice of Motion in question came to be filed, on which reliefs as noted above have been granted. In pursuance of the impugned order, the Court Receiver was appointed for taking possession, who is stated to have taken symbolic possession on 7 January, 2023. It is stated by Mr. Tejpal, learned counsel for respondent no. 2 that respondent no. 2 is in physical possession of the flat in question. He submits that in principle, respondent no. 2 has no opposition to the redevelopment of the premises of the Society and is willing to handover the possession of the said flat to the Society for the purpose of redevelopment. He, however, submits that this shall be subject to the outcome of First Appeal No. 672 of 2022 filed by respondent no. 2 against the appellants arising from the judgment and order dated 15 March, 2022 passed by the City Civil Court, Greater Mumbai in S.C. Suit No. 6683 of 2006 (H.C. Suit No. 2035 of 2006). It needs to be noted that the appellant had filed such suit initially before this Court, which was subsequently transferred to the City Civil Court, against one Daulat Morabia and respondent no. 2-Ms. Bhavini

Jhaveri and Shri Arihant Cooperative Bank Ltd. in respect of suit premises which includes the flat in question and the shop which is also in the building of the Society. The said suit was decreed by the judgment and order in favour of the appellant in the following terms:

“ORDER

- “1. The suit is decreed with costs.*
- 2. It is declared that the suit agreement dated 16/01/2006 (Exh. 11) is legal, valid, subsisting and binding on the defendants.*
- 3. The plaintiff is directed to deposit the balance consideration amount of Rs.50,00,000/- (Rupees fifty lacs) in the Court within period of three months from today.*
- 4. The defendant nos. 1 to 3 are directed to specifically perform their obligations as per agreement dated 16.01.2006 (Exh. 11).*
- 5. After depositing of the balance amount by the plaintiff, the defendants to comply with the agreement dated 16/01/2006 by handing over the possession of the suit flat within three months from the date of depositing an amount in the Court.*
- 6. The defendants are directed to specifically perform each and every clause of agreement dated 16/01/2006 by complying with all the necessary formalities under the provisions of law.*
- 7. An inquiry under Order 20 Rule 12 of the Civil Procedure Code be made with regard to the mesne profits from the date of institution of the suit till the delivery of possession of the suit flat to the plaintiffs.*
- 8. The defendants or their agents or servants are perpetually restrained from creating any third party right or interest, alienating and encumbering, disposing of the suit premises, except for complying with MOU (Exh.11).*
- 9. Decree be drawn up accordingly.”*

7. Against the above judgment and order, respondent no. 2 has already filed First Appeal, which is still pending for adjudication.

8. Mr. Joshi, learned counsel for the appellants submits that the appellants have decree of specific performance of the Agreement dated 16 January, 2006 in relation to the flat in question, in their favour and thus, the appellants would be entitled not only to the rights in respect of the said flat but also the rights in regard to redeveloped premises.

9. Mr. Nayak, learned counsel for respondent no. 1-Society contends that the main concern of the Society in respect of redevelopment of the Society, which is stated to be in no manner concerned with the disputes interse between the appellants and respondent no. 2. He makes a statement that the Society is willing to abide by any orders which would be passed by this Court in the pending First Appeal as filed by respondent no. 2. The statement as made by respondent no. 1 is accordingly accepted in that regard.

10. Insofar as the flat in question is concerned, the Court Receiver as appointed by the impugned order has already taken over the possession as noted above. In the present circumstances, the Court Receiver would be required to be discharged, as Mr. Tejpal, learned counsel for respondent no. 2 has made a statement that respondent no. 2 shall handover physical possession of the flat to the Society within a period of one week from the date of copy of this order is made available on the official website of the High Court. Statement of Mr. Tejpal is accepted.

11. Insofar the appellants are concerned, the appellants would also be entitled to assert all the rights and contentions in the pending first appeal in regard to the flat in question and whatever benefit the appellants may have under the decree passed by the City Civil Court in S.C. Suit No. 6683 of 2006. In that regard, all contentions of respondent no. 2 are also kept open.

12. In the above circumstances, the appeal would not warrant any further adjudication. It is accordingly disposed of in terms of the following order:

ORDER

(i) The Court Receiver as appointed by the impugned order dated 20 October, 2022 stands discharged, subject to clearing of payment of his charges/fees, if any;

(ii) Respondent no. 2 is directed to handover Flat No. 4 to the Society within a period of one week from which the copy of this order is available in the official website of the High Court;

(iii) Insofar as the rights and contentions of the appellants are concerned, they are free to assert all their contentions in the pending appeal to seek orders in that regard by moving an appropriate application. This shall be subject to all contentions of respondent no. 2 which needs to be asserted in such proceedings which may be filed by the appellants;

(iv) Needless to observe that all contentions of respondent no. 2 as also the appellants in the pending First Appeal are kept open. The statement as made on behalf of the Society that they shall abide by the orders which would be passed in the First Appeal is accepted as undertaking to the Court.

(v) Needless to observe that the respective rights and contentions in regard to either the appellants or respondent no. 2 being entitled to redevelopment premises shall be subject to appropriate orders that may be passed by this Court in the First Appeal.

13. In view of disposal of Appeal from Order, Interim Application would not survive and the same is accordingly disposed of.

G. S. KULKARNI, J