

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

**APPEAL FROM ORDER NO.971 OF 2023
WITH
IA/17609/2023 IN AO/971/2023**

Mr. Deepak Janardan Save	... Appellant
Versus	
M/s. Global Housing Ventures	
Thr. Its Partner	... Respondent

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Mr. Anil Pakhare Sr. Advocate i/b. Mr. R. S. Mirpury for Appellant.
None for Respondent.

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**CORAM : SANDEEP V. MARNE, J.
DATE : 04 DECEMBER 2023.**

P. C.:

The present Appeal is filed challenging Order dated 02 November 2023 passed by City Civil Court partly allowing Notice of Motion No.91 of 2021 filed by the Appellant / Plaintiff. The City Civil Court has passed following Order :-

ORDER

1. Notice of Motion No.91 / 2021 taken out by the plaintiff is partly allowed.
2. Defendant No.2 is directed not to create third party interest in the suit flat i.e. permanent alternate accommodation, which would be provided to him by defendant No.1 in lieu of Flat No.1, situated in Jawahar Building, Pahadi School,

Road No.2, Off. Aarey Road, Shreyas Colony, Goregaon (East), Mumbai, till disposal of the suit.

3. Notice of Motion No.1102 / 2021 taken out by defendant No.2 is allowed.
4. Defendant No.1 is directed to deliver possession of the suit flat i.e. permanent alternate accommodation in lieu of Flat No.1 situated in Jawahar Building, Pahadi School, Road No.2, Off. Aarey Road, Shreyas Colony, Goregaon (East), Mumbai in favour of defendant No.2.
5. Costs in cause.

2. It appears that Plaintiff was the tenant in respect of premises in the old building. Since the old building was taken up for redevelopment, Defendant No.1 Developer executed Permanent Alternate Accommodation Agreement (PAAA) in the name of Plaintiff on 14 May 2014. Shortly after execution of PAAA Plaintiff executed gift deed in respect of Permanent Alternate Accommodation in favour of mother on 27 November 2014. The mother in turn executed gift deed in respect of Permanent Alternate Accommodation in the name of Defendant No.2 on 26 December 2014. This is how Defendant No.2 claims right, title and interest in the Permanent Alternate Accommodation.

3. Mr. Pakhare, the learned senior advocate appearing for Appellant would rely upon provisions of Section 122 of the Transfer of Properties Act which reads thus :-

122. “Gift” defined.—“Gift” is the transfer of certain existing moveable or immoveable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee. Acceptance when to be made.—Such acceptance must be made during the lifetime of the donor and while he is still capable of giving. If the donee dies before acceptance, the gift is void.

4. According to Mr. Pakhare the gift deed cannot be executed in respect of non-existing immovable property. According to him, as on the date of execution of gift deed dated 27 November 2014 in favour of the mother, the Permanent Alternate Accommodation was yet to be constructed. In my view, Permanent Alternate Accommodation is to be granted in lieu of vacation of the old structure by owners / tenants. Therefore by virtue of execution of PAAA in favour of owner / tenant, the right, title and interest in immovable property is created in favour of such owner / tenant. *Prima facie* therefore it is difficulty to accept that gift deed cannot be executed in respect of Permanent Alternate Accommodation which is under construction till possession of Permanent Alternate Accommodation is actually handed over.

5. Mr. Pakhare would further submit that execution of gift by mother in favour of Defendant No.2 is under dispute. This is something which will have to be considered at the time of final decision of the suit.

6. The City Civil Court, while partly allowing Notice of Motion has directed Defendant No.1-Developer to handover possession of the Permanent Alternate Accommodation in favour of Defendant No.2 with

further direction to Defendant No.2 not to create any third party interest in the same. In that facts and circumstances of the case the City Civil Court correctly directed handing over possession of the Permanent Alternate Accommodation to Defendant No.2. In the event Plaintiff succeeds in his suit, his title in respect of the Permanent Alternate Accommodation would be restored / confirmed. Till such time, Defendant No.2 would continue to occupy Permanent Alternate Accommodation without creating any third party interest in the same. I do not find any palpable error in the Order passed by the City Civil Court. Appeal being devoid of merits is dismissed without order as to costs. Since the Appeal is disposed of nothing survives in the Interim Application and it is also disposed of.

7. Needless to clarify that the City Civil Court would not be influenced by any of the observations made in the present Order while deciding the suit finally. Considering the nature of the dispute involved in the suit, the City Civil Court is requested to expedite the hearing of the suit.

SANDEEP V. MARNE, J.

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