

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO.4779 OF 2022

IN

SUIT NO.2588 OF 2011

CCI Chambers Co-Operative Housing
Society Limited

...Applicant
/Ori.Defendant No. 6

In the matter of

Kalpana Anantrao Kakkad

...Plaintiff

vs.

Mahendra K. Ghelani and Others

...Defendants

VISHAL
SUBHASH
PAREKAR

Digitally signed by
VISHAL SUBHASH
PAREKAR
Date: 2023.01.11
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Mr. Rakesh Pandey i/b. ALT & Partners, for the Applicant.

Ms. Shobhna Waghmare i/b. Mulani & Co., for the Plaintiff.

Mr. Nilesh Modi a/w. Mr. Parantap Mehadevia i/b. Rustomji and
Ginwala, for Defendant No. 1.

Ms. Shalaka Chamboowala i/b. RMG Law Associates, for Defendant
No. 5.

Mr. Amit Patil i/b. Parinam Law Associates, for Respondents No. 1
to 4.

Mr. D.M. Patil, Representative of C.R. present.

CORAM : N. J. JAMADAR, J.

DATE : JANUARY 09, 2023

P.C.:

1. Heard the learned counsel for the plaintiff.
2. The applicant/ original defendant No. 6 has taken out this
application praying for, inter alia, the following reliefs:

a] That pending the hearing and final disposal of
the present suit, the respondent No. 5 be directed
by an order of injunction of this Court to expel,
eject and evict the respondent Nos. 1 to 3 from the
occupation of the flat No. 24 in the building.

b] That pending the hearing and final disposal of the present suit, the respondent Nos. 1 to 4 be directed by an order of injunction of this Court to uninstall, remove and/or take out the said objectionable/ unauthorized net placed over the compound and the car parking area of the flat No. 24 of the building.

c] That pending the hearing and final disposal of the present suit, the respondent Nos. 1 to 4, their directors, officers, employees, agents, servants and any person acting through either of them or on either of their behalf, be restrained by an order of injunction of this Court to install, erect and or place any net, cover or structure over the compound and the car parking area of flat no. 24 of the building without the prior written permission of the applicant.

d] That pending the hearing and final disposal of the present suit, the respondent Nos. 1 to 4, their directors, officers, employees, agents, servants and any person acting through either of them or on either of their behalf, be directed to follow the rules and regulations of the applicant society.

3. In the context of prayer clause (a), it would suffice to note that the Division Bench in Appeal (L) No. 855 of 2015 in Notice of Motion (L) No. 2347 of 2015 in Suit No. 2588 of 2011 by order dated 14th March, 2016 directed, by way of ad-interim order, the appointment of the Receiver in respect of the suit flat with further direction that the Court Receiver shall not disturb the possession of

the respondent Nos. 7 to 9, the respondent Nos. 1 to 3 herein.

4. In view of the aforesaid order, at this stage, the prayer to direct respondent No. 5, the Court Receiver to expel, eject and evict respondent Nos. 1 to 3 from the occupation of the flat number 24 cannot be countenanced.

5. It is, however, made clear that the Court has not delved in the capacity in which the respondent Nos. 1 to 4 are in the occupation of flat No. 24. All questions in that regard are kept open for consideration in appropriate proceeding.

6. So far as prayer clause (b), the learned counsel for respondent Nos. 1 to 4, on instructions, makes a statement that the respondent Nos. 1 to 4 have removed the net placed over the compound and car parking area of flat number 24 of the building.

7. The learned counsel for respondent Nos. 1 to 4 further submits that respondent Nos. 1 to 4 are ready to abide by the rules and regulations of the applicant-society in the matter of the occupation of the flat number 24 and parking area in the applicant-society.

8. The aforesaid statement made on behalf of respondent Nos. 1 to 4 is accepted.

9. With the aforesaid clarification and subject to the statement made on behalf of respondent Nos. 1 to 4 that they would abide by the rules and regulations of applicant-society, the application stands disposed.

(N. J. JAMADAR, J.)