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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 1802 OF 2018
IN
WRIT PETITION NO. 7609 OF 2013

Life Insurance Corporation of India ... Applicant
In the matter between
Mrs. Namita Kamal Narayan Sadh ... Petitioner
Vs.
Life Insurance Corporation of India ... Respondent

Mr. Akshay Ajit Shah for the Applicant.

None appears for Petitioner in Writ Petition.

CORAM : GAURI GODSE, J.

DATE : 19th MARCH 2024

P.C.

1. None appears for the respondent in the Writ Petition.
2. Learned counsel for the applicant submits that prayer in the application filed on 29th January 2018 refers to the preliminary plans that were annexed to the application. He submits that due to passage of time the applicant would be required to amend the plans. Hence, the applicant be permitted to demolish the subject premises for redevelopment as per the fresh plans that will be approved in accordance with law.

3. Learned counsel for the applicant further submits that the particulars regarding the proposed redevelopment are stated in affidavit-cum-undertaking in paragraph 4. He therefore submits that the applicant be permitted to demolish the subject premises for redevelopment as per plans that will be approved in accordance with law.

4. By order dated 8th March 2024 for the reasons recorded in the said order the applicant was permitted to file affidavit-cum-undertaking agreeing to protect the interest of the petitioner in the event the petitioner succeeds in the petition. Pursuant to the directions issued in order dated 8th March 2024 the applicant has filed affidavit-cum-undertaking dated 18th March 2024. The undertakings recorded in the said affidavit are accepted as undertakings to the court. For the sake of convenience the entire order passed on 8th March 2024 is reproduced below :

1. Learned counsel for the applicant submits that pursuant to order dated 14th February 2024, he made an attempt to serve a copy of the present application alongwith copy of the order dated 14th February 2024 on the petitioner. He submits that he has sent notice on the address which is subject matter of the

dispute as well as on the residential address of the petitioner.

2. He submits that the notice sent by post to the residential address of the petitioner is returned with remark "unclaimed". He submits that the notice issued on the address i.e. subject premises is returned with remark "insufficient address". He further submits that he has filed affidavit of service to that effect.

3. Learned counsel for the applicant further states that pursuant to the orders impugned in the petition, possession of the suit premises is already taken over by the applicant. The said fact is also recorded at the time of admitting the petition on 27th August 2014. He submits that since possession of the suit premises was already taken over, interim relief was categorically refused on 27th August 2014.

4. Learned counsel for the applicant further referred to the various orders passed in the application and in particular order dated 21st January 2019. The learned Advocate for the petitioner had appeared in this civil application on 21st January 2019 and had taken time to go through the papers. He therefore submits that though the Advocate appearing for the petitioner is served with the copy of the application and he continues to appear for the petitioner in the matter, there is no affidavit in reply filed opposing the present civil application.

5. He submits that even pursuant to order dated 24th January 2020, he had attempted to serve the petitioner on both the addresses i.e. address of the suit premises as well as the residential address of the petitioner. He submits that the said

letters were returned unserved, He submits that he has filed affidavit of service dated 6th February 2020 stating that the notice issued on the residential address of the petitioner was returned with remark "left".

6. *He further submits that even pursuant to the recent order passed by this court dated 14th February 2024 he has complied with the directions and filed affidavit of service dated 4th March 2024.*

7. *Learned counsel for the applicant further submits that the petitioner challenges dismissal of petitioner's appeal filed before the City Civil Court challenging the order of eviction passed by the Estate Officer. He thus, submits that the eviction order against the petitioner has been confirmed by the City Civil Court. Hence, in the event the petitioner succeeds in the petition, at the highest she may be entitled to seek possession of the suit premises.*

8. *He further submits that considering the facts of the case, the applicant has a fair chance of succeeding in the petition and there is no merit in the ground of challenge raised on behalf of the petitioner. He thus, submits that only due to pendency of the petition, the applicant is unable to redevelop the property.*

9. *He submits that in the present application specific averments are made disclosing reasons for redevelopment of the property. He relies upon the specific averments made in paragraphs 5 to 8 of the application. He thus, submits that serious prejudice is caused to the applicants by keeping the*

premises locked. He therefore, submits that in such circumstances the applicant be permitted to file affidavit-cum-undertaking in this court stating that in the event the petitioner succeeds in the petition, the applicant would handover equivalent area in the same vicinity.

10. He submits that such undertaking will protect the interest, if any, of the petitioner. He thus, requests for one weeks time to file affidavit-cum-undertaking of the applicant.

11. List the petition for passing further orders on 19th March 2024. To be listed under the caption for "Directions".

5. For reasons recorded in the order dated 8th March 2024 and in view of the affidavit-cum-undertaking dated 18th March 2024, the applicants are permitted to demolish the subject premises for redevelopment in accordance with the approved plan for redevelopment as permissible in law and subject to compliance of affidavit-cum-undertaking

6. Civil Application is allowed in the aforesaid terms.

[GAURI GODSE, J.]