

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4958 OF 2024

Sarafraz Sharafali Furniturewalla

..... Petitioner

VERSUS

Afshan Sharafali Ashok Kumar & Ors.

..... Respondents

Mr.Rustam Pardiwalla i/b. Mr.Rushabh Thacker for the Petitioner.

Mr.Suraj Shah, a/w. Mr.Zaid S. Ansari, Mr.Mangesh Kokare,
Mr.Anmol Menon i/b. Zaid S. Ansari & Associates for the
Respondent Nos. 1 and 2.

Mr.Manal Dhanani i/b. Cue Legal for the Respondent No.3.

CORAM: RAJESH S. PATIL, J.

DATE : 2 APRIL, 2024

P.C. :-

This writ petition is filed by the original defendant no.2 in
R.A.D.Suit No. 372 of 2017, challenging the order dated 2
September, 2023, passed in order below Ex.38.

2. Application Ex. 38 was filed by the original defendant no.1,
who is the landlord/developer of the building in which the suit
premises was situated. The original tenant of the suit premises

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being flat no.5 situated in a building Saigal House. It is admitted by both the learned counsel, that the original tenant was one Mr.Sharafali Furniturewalla. The said Mr.Sharafali Furniturewalla, had two wives. The petitioner/defendant no.2 is the son born out of the marriage of the said Sharafali, with first wife; and the plaintiff nos. 1 and 2 and defendant nos. 3 and 4 are the children of Sharafali, born out of the marriage with second wife.

3. Since the building Saigal House was declared into “C-1” by the Corporation, the landlord/developer decided to re-develop the suit building by demolishing it. The landlord/developer signed an PAAA agreement dated 31 March, 2017 with the petitioner/original defendant no.2 (Sarfaraz).

4. Subsequently, the children born out of the second marriage of Sharafali filed R.A.D.Suit No. 372 of 2017, in the month of July 2017 against the landlord/developer, and also added the son born out of the first marriage of Sharafali, one Mr.Sarfaraz who is

the petitioner in the present proceedings. In the said R.A.D.Suit, the landlord/developer filed an application Ex.38 for seeking a prayer of handing over vacant and peaceful possession of the suit premises and also to allow the landlord/developer to deposit the rent for the suit flat in Court.

5. Mr.Manal Dhanani, learned counsel appearing for the landlord/developer today submitted before this Court that the prayer clause (a) of the application Ex.38 had become infructuous as the possession of the suit premises was handed over to the landlord by the original defendant no.2 (Sarfaraz) on 30 June, 2023.

6. Suffice will be the purpose if the impugned order dated 2 September, 2023 which is passed on application 38, is confirmed till the hearing and final disposal of the R.A.E.Suit No. 372 of 2017.

7. However, certain directions needs to be passed as regards

the amount which is been deposited by the landlord/developer and which is invested by the Court of Small Causes. Such directions are necessary because the petitioner herein who is the original defendant no.2 has argued today before this Court through his counsel that he is facing financial difficulties as he was the person who has handed over the possession of the suit premises to the landlord/developer and he is the person with whom the landlord/developer had entered into a PAAA agreement dated 31 March, 2017. He submits that today at an advance age he is staying in the rental accommodation where he is paying monthly compensation of Rs.1,20,000/- per month.

8. Mr.Shah, learned counsel appearing for the respondent nos. 1 and 2 who are the original plaintiffs submits that his clients have already filed a declaratory suit in the Court of Small Causes being R.A.D.Suit No. 372 of 2017. He submits that all the rights of the parties will be decided in the R.A.D.Suit. Hence, the defendant no.2 (Sarfaraz) should not be allowed to withdraw the entire compensation which is deposited by the

landlord/developer.

9. After the matter was argued for some time, both the learned counsel as an interim arrangement have consented for following arrangement without prejudice to the rights and contentions of both the parties.

10. Writ petition is disposed of with following directions :-

(i) The landlord/developer will adhere to the order passed by the Court of Small Causes dated 2 September, 2023 in order below Ex.38 till the hearing and final disposal of the R.A.D. Suit.

(ii) As an interim arrangement, the original defendant no.2 (Sarfaraz) is allowed to withdraw 50% of the amount deposited by the landlord/developer i.e. Rs.1,35,000/- from the month of April 2024.

(iii) Similarly, the original plaintiff and the defendant nos. 3 and 4, jointly are allowed to withdraw the balance 50% of the amount deposited by the landlord/developer which as of today would be Rs.1,35,000/- from April 2024.

(iv) Hearing and final disposal of the R.A.D. Suit No. 372 of 2017 which according to the learned counsel is at the stage of filing of the evidence of the plaintiff, is hereby expedited.

(v) The Court of Small Causes should make an endeavour to dispose of the suit after recording evidence and hearing the parties on merit within a period of one year from today.

(vi) All parties before this Court through their counsel undertake that they will co-operate with the hearing of the R.A.D.Suit No. 372 of 2017 and would

not seek unnecessary adjournment.

(vii) The amount which has already been deposited by the landlord/developer will remain in the fixed deposit in the bank, as done by the Small Causes Court Department.

(viii) The original plaintiff nos. 1 and 2 and defendant nos. 2, 3 and 4 will file an undertaking before the Court of the Small Causes that the arrangement which has been agreed today, is a temporary arrangement which would be followed by them till the hearing and final disposal of the R.A.D. Suit No. 372 of 2017 and in case an order adverse to them is passed by the Court of the Small Causes, they will undertake that they will return back the entire money which they have withdrawn from the Court of Small Causes along with the interest, if any, as directed by the Court of Small Causes to the Court Department

or to the parties as directed by the Court of Small Causes, which is hearing the R.A.D. Suit No. 372 of 2017. The said undertaking should be filed by the original plaintiff, defendant nos. 2 and 3 within a period of one week from today before the Court of Small Causes. The defendant no.4 should file a similar kind of undertaking within a period of two weeks from today before the Court of Small Causes, since the parties herein submitted that the defendant no.4 as of now is staying in U.S.A.

(ix) Since, the plaintiff nos. 1 and 2, jointly with the defendant nos. 3 and 4 are allowed to withdraw 50% of the amount which would be deposited by the landlord/developer as transit rent, they can by filing an consent affidavit within two weeks, agree to withdraw the said amount in the name of one of them.

(x) At this stage, after the writ petition was

disposed of, Mr.Shah, learned counsel appearing for the original plaintiff submits that since the suit premises is no more in existence and the R.A.D. Suit was filed in the year 2017, his client will prefer an application for amendment to that effect in the plaint.

(xi) The original plaintiff is hereby granted till 10 April, 2024 a week's time from today to prefer an application for amendment only to the limited extent of bringing the fact as regards the change in the nature of suit premises and averment to that effect only. If such an application is made by 10 April, 2024 within a period of one week from today, the defendants including the contesting defendant no.2 will have a right to file a reply to such application if served within one week from today to file a reply by 16 April, 2024. Such amendment application can then be heard expeditiously by the Court of Small Causes and disposed of by 6 May, 2024.

(xii) The parties are permitted to prefer an application for preponement of the date of hearing of the suit which according to the parties is scheduled on 22 April, 2024.

11. Writ petition is disposed of accordingly.

[RAJESH S. PATIL, J.]