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

CIVIL REVISION APPLICATION NO. 44 OF 2024

Rajaram T. Raut

.. Applicant

Versus

Manisha Rajaram Raut and Ors.

.. Respondents

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- Mr. M.S. Topkar a/w. Ms. Vaishali Bhilare i/by Mr. Saurabh Mandlik, Advocates for Applicant.

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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 01, 2024.

P.C.:

- 1.** Heard Mr. Topkar, learned Advocate for the Applicant.
- 2.** The order impugned in the present Civil Revision Application is dated 06.12.2023 passed in Chamber Summons No.278 of 2023 partly allowing the Chamber Summons.
- 3.** Several reliefs were prayed for in the Chamber Summons by the original Defendant No.2 who is the son of Plaintiff. Defendant No.2 is appearing in-person, but he is not present in Court today when the matter is called out and heard. The original Suit has been filed by the Plaintiff for recovery of possession of the Suit flat. Defendant Nos.1 and her two sons i.e. Defendant Nos.2 and 3 are admittedly living in the same flat. Plaintiff incidentally is living separately. There was a matrimonial dispute. Decree of divorce is granted by the Family Court and confirmed by this Court.

4. In the interregnum, necessity has arisen in view of the fact that the Society in which the Suit flat is situated has gone for redevelopment and the Suit flat is now required to be vacated and handed over to the Society / Developer. At this point of time, issue of execution of PAAA and receipt of transit rent has arisen. By the impugned order, the learned Trial Court after taking cognizance of certain decisions of this Court held that Defendant Nos.1 to 3 shall be entitled to transit rent as also all other incidental and ancillary charges receivable from the Developer since they are residing in the flat at present.

5. Though the learned Trial Court has held that payment of all such amounts shall be subject to any order which the Plaintiff may obtain in the pending Suit, it is the grievance of the Plaintiff that the Suit flat was purchased by him in the year 1979-80 as his self acquired property from his own source of income and it stands exclusively in his name. Plaintiff is the member of the Society in respect of the Suit flat. He claims the transit rent since at present he is residing with his friend as informed by Mr. Topkar.

6. Mr. Topkar would submit that due to the matrimonial dispute, Plaintiff was dispossessed from his own Suit flat. He would however submit that despite the above facts, the Suit flat belongs to the ownership of the Plaintiff and it is only the Plaintiff who would be

entitled to the redeveloped flat as also the transit rent. These submissions have been negated by the learned Trial Court. I need to hear the contesting Respondents. An arguable case is made out by the Plaintiff due to his ownership of the Suit flat.

7. Issue notice to the Respondents. Humdast permitted.

8. In addition to Court notice, Applicant is permitted to serve a copy of the Civil Revision Application and this order on the Respondents and inform them about the next date of hearing by any permissible mode of service and file appropriate Affidavit of service with tangible proof thereof on or before the next date.

9. Respondents are directed to remain present in Court on the next adjourned date either by themselves or through Advocates.

10. Respondents are directed to take cognizance of this order and file their Affidavit-in-Reply on or before the next date, if so desired.

11. I am informed by Mr. Topkar that the Suit flat is now to be handed over to the Developer in the next two months. In that view of the matter, present Civil Revision Application shall be disposed of on the next adjourned date at the stage of admission itself.

12. Stand over to **15th February, 2024.**

[MILIND N. JADHAV, J.]