

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6255 OF 2024

Dhananjay Vishnu Kulkarni

.. Petitioner

Versus

Shubhangini Arvind Joshi & Ors.

.. Respondents

.....

- Mr. S.N. Chandrachood for Petitioner
- Mr. Roopadaksha Basu i/by M/s. Law Point for Respondent No. 1

.....

CORAM : MILIND N. JADHAV, J.

DATE : MAY 08, 2024

P. C.:

1. Heard Mr. Chandrachood, learned Advocate for Petitioner and Mr. Basu, learned Advocate for Respondent No. 1.

2. Perused the impugned order dated 26.03.2024 which is passed by learned Trial Court in the Application below Exh. 117 in SCS No. 1238/2015. By the said Application below Exh. 117, Petitioner (Org. Defendant No. 4) prayed for setting aside of injunction order passed on 19.11.2016. After applying its mind, learned Trial Court has rejected the said Application by giving substantive reasons.

3. Mr. Chandrachood would submit that there are certain directions contained in the order dated 26.03.2024. He would submit that this Court be pleased to issue clarification to the extent that redevelopment of the Society building wherein the said Flat No. 12 is situated should not be withheld due to any orders passed either by the

learned Trial Court or by this Court. He would submit that if redevelopment is undertaken and admittedly Petitioner is in possession of the said flat, then it is the Petitioner who should be entitled to alternate accommodation during the interregnum as also the transit rent. However, it is seen that the Suit which is filed before the Trial Court is a Suit for partition of properties between the parties. It is contended by Petitioner that the said Flat No. 12 is not a part of the suit properties required to be partitioned, but it is a self acquired property derived by the Petitioner through his father. Be that as it may, this stand of Petitioner is refuted by Mr. Basu, learned Advocate for Respondent No. 1 (Org. Plaintiff).

4. Today learned Advocates for Defendant No. 4 as well as Plaintiff are before me. They would agree that redevelopment of the Society should not be hampered in which the said flat is situated due to any orders passed by the Civil Court. Both the parties are however unable to inform me the exact status and stage of redevelopment. In that view of the matter, Petitioner is directed to implead the Society i.e. Sahakar Suvaas Co-operative Housing Society situated at Plot Nos. 17-18, Ramkrishna Chemburkar Road, Opp. Golden Lawn Hotel, Chembur, Mumbai – 400 071 as party Respondent in this Petition. Amendment is permitted to be carried out within a period of one week from today. Re-verification stands dispensed with.

5. Issue notice to the unserved Respondents including the Society made returnable on 19.06.2024. Humdast permitted. In addition to Court's notice, Petitioner is directed to serve copy of the Petition along with copy of this order on the said 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. After receiving the notice, Respondents to file affidavit-in-reply on or before the next date, if so desired with an advance copy to the Advocate for Petitioner.

6. Respondents are directed to remain present either themselves or through their Advocate on the next adjourned date. It is made clear that if Respondents remain absent despite service on the next adjourned date, this Writ Petition shall be heard and disposed of at the stage of admission in the absence of the Respondents.

7. Newly impleaded Respondent Society is directed to inform to the Court the exact status of redevelopment of the Building in which Flat No. 12 is situated on affidavit on the next adjourned date so as to enable this Court to pass appropriate directions and order in the interest of justice.

8. Stand over to **19th June, 2024.**

[MILIND N. JADHAV, J.]

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by RAVINDRA
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