

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 911 OF 2024
WITH
INTERIM APPLICATION NO. 15838 OF 2024

Ashadevi Ramchandra Mishra

...Appellant

Versus

Kazi Realtors Pvt Ltd

...Respondent

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CHAVAN

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Mr. Bhavin Gada a/w Birendranath Shukla and Deepak Shukla, Satsang Tailor i/b BNS Legal for the Appellant.

Mr. Rohit Lalwant a/w Noorain Patel i/b Diamondwala and Co. for Respondent.

CORAM : M.M. SATHAYE, J.
DATE : 16th DECEMBER 2024

P.C. :

1. Heard learned counsel for the Appellant/Plaintiff and learned counsel for the Respondent/Defendant – Developer.

2. The Appeal is filed challenging the order dated 25.10.2024 passed by the City Civil Court, Greater Bombay in Notice of Motion No. 2817 of 2024 in Suit No. 5471 of 2024. By the impugned order, the motion taken out by the Appellant is partly allowed to the extent of prayer clauses (a) (ii) and (a) (iv). By those prayers, Respondent/Defendant is directed to pay arrears of transit rent till 31.05.2024 and Respondent is restrained from creating 3rd party interest or charge or encumbrance of the suit property which is Room No. 1101 on 11th floor in newly constructed building known as Unity Towers A-Wing, Pandurang Budhkar Marg, Lower Parel, Mumbai. Learned counsel for

the Respondent/Developer confirms that according to the Developer, the subject matter of the present dispute is in respect of Room No. 1101 in the said new building, hereinafter referred to as 'the suit flat' for short.

3. Learned counsel for the Appellant submitted that his prayer regarding execution of necessary agreement and for handing over the possession of the suit flat, are not considered by the Trial Judge only on the ground that there are disputes pending between the Appellant and the the wife of earlier tenant.

4. Learned counsel for the Appellant has pointed out from the record that one Mr. Shivprasad Mishra was the earlier tenant, who had surrendered his tenancy in the old tenement, who had executed several documents such as surrender of tenancy/transfer. He submitted that the old landlord entered into tenancy agreement with the Appellant and accepted him as new lawful tenant and rent receipts were issued. Admittedly, Respondent/Developer has entered into PAAA¹ with the Appellant and the earlier tenement was handed over by the Appellant for the purpose of redevelopment.

5. Learned counsel for the Appellant further pointed out that 2 proceedings viz. RAD Suit No. 165 of 2014 and S.C. Suit No. 287 of 2017 are pending in Small Causes Court and City Civil Court, Mumbai respectively. He submitted that in RAD Suit No. 165 of 2014, the present Respondent - Developer has filed written statement confirming the execution of PAAA with the Appellant and payment of transit rent to him. So also, it is pointed out, that in RAD Suit No. 165 of 2014 and in

1. Permanent Alternate Accommodation Agreement

SC Suit No. 287 of 2017 in the City Civil Court, motions filed by the earlier tenant or his wife for interim reliefs and filing belated written statement has been rejected on 03.11.2017 and 11.10.2022. In such situation, the present suit and motion were filed.

6. Learned counsel for the Respondent/Developer submits on instructions, that Respondent is not willing to go into the dispute between the Appellant and erstwhile tenant or his wife and it had even filed motion in the Trial Court (N/M No. 3333 of 2021 in Suit No. 287 of 2017), for depositing the key of the suit flat, however it was not favourably considered. He submits that the Respondent - Developer wants to avoid unnecessary allegations from third party and wants to safeguard its interest.

7. Perusal of the impugned order shows that the Trial Court was conscious of the fact that Respondent/Developer had obtained possession from the Appellant for the purpose of redevelopment and Respondent/Developer has paid transit rent to the Appellant till December 2018 to the Appellant. Learned Trial Judge was also conscious of the fact that when the possession was handed over to the Respondent/Developer, the Appellant was in possession of the old tenement. Learned Trial Judge was also aware that both parties have performed their part i.e. Appellant by surrendering the possession of old tenement and Respondent by re-developing the property. Only on the ground that disputes are pending against the present Appellant, by the wife of the earlier tenant, whose applications are rejected, the present notice of motion is rejected so far as the prayer of executing the agreement and handing over possession is concerned. The said dispute is purely *inter se* the Appellant and wife of earlier tenant.

8. Relying on orders passed in **Saikrupa Co-operative Society v/s. Osho Developer & Ors.**² and **Namo Reality Ventures LLP v/s. Bhanujyoti CHS Limited and Ors.**³ passed by this Court, learned counsel for the Appellant contended that it was the Appellant who was dis-housed and faced the hardship and therefore, it is the Appellant who must be put back in possession with necessary agreement in her favour. He submitted that the right of the Appellant as well as her possession will be subject to outcome of the dispute between the Appellant and said third party, as indicated above in those 2 suits.

9. In **Vipul Fatechand Shah Vs. Nav Samir Co-Op. Housing Society & Ors**⁴, Division Bench of this Court, after considering the aforesaid cases relied upon by the Appellant as well as other caselaw, has held as below :

“6. We have heard learned Counsel and find that in so far as the issue of transit rent is concerned, the law is now well settled. It is not in dispute that the transit rent is to be paid to the person, who is being dishoused from the premises in question. It is also clear that the person dishoused for the purpose of redevelopment shall be put back into possession on completion of the redevelopment. It is clear that inter se disputes qua title and/or entitlement to the flat, which is subject to redevelopment, are not factors which are relevant or to be considered for purposes of payment of transit rent as also possession being handed back to the person dishoused on completion of the redevelopment.”

[Emphasis supplied]

2. Commercial Arbitration Petition (L) No. 1097/2022.

3. Arbitration Petition No. 30/2022.

4. Comm. Appeal (L) No. 25162 of 2023 Order dated 06.10.2023.

10. Considering the above view taken by this Court, when admittedly the Appellant had handed over the possession of the old tenement and she was receiving the transit rent, in my view, the possession can be handed over to the Appellant by executing necessary agreement, subject to undertaking to this Court, which will sufficiently safeguard the apprehension of the Respondent/Developer.

11. Accordingly, the Appeal from Order and Interim Application are disposed of by passing following order.

(i) The Appeal is partly allowed.

(ii) The Appellant shall file a written undertaking in this court within a period of 1 week from today, stating that execution of agreement in favour of the Appellant by Respondent/Developer as well as receipt of possession thereunder of suit flat, shall be subject to final outcome of the RAD Suit No. 165 of 2014 and S.C. Suit No. 287 of 2017 and the Appellant will abide by the orders that may be passed in those suits. All contentions of the parties to said suits are kept open.

(iii) Subject to such undertaking being filed, the Respondent/Developer shall execute necessary agreement in favour of the Appellant and handover the possession of the suit flat to her, within a period of 3 weeks of the copy of undertaking being served upon the Respondent.

12. Learned counsel for the Appellant submits that his challenge about non-receipt of transit rent after 31.05.2024 till possession, will

continue. It appears that the impugned order is also challenged by the Respondent/Developer by filing separate Appeal from Order No. 902 of 2024 in respect of order of payment of transit rent. In short, the entire dispute about payment of transit rent is yet to be considered between the parties. Accordingly, it is ordered that pending dispute about payment of transit rent will be considered in Appeal from Order No. 902 of 2024.

13. All concerned to act on duly authenticated or digitally signed copy of this order.

(M.M. SATHAYE, J.)