

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**APPEAL (L) NO.1272 OF 2024
IN
INTERIM APPLICATION (L) NO.22770 OF 2023
IN
SUIT NO.582 OF 2013
WITH
INTERIM APPLICATION (L) NO.1277 OF 2024
IN
APPEAL (L) NO.1272 OF 2024**

Mrs. Achala Rajesh Agarwal (Nominee)
Through Mr. Lakvinder Atma
Singh Randhawa
constituted attorney for
Achala Rajesh Agarwal

: Appellant/Applicant
(Defendant No.1B)

Vs.

Vinod Narayandas Punjabi and ors. : Respondents.

**ALONG WITH
APPEAL (L) NO.1280 OF 2024
IN
INTERIM APPLICATION (L) NO.372 OF 2024
IN
SUIT NO.582 OF 2013
WITH
INTERIM APPLICATION (L) NO.1287 OF 2024
IN
APPEAL (L) NO.1280 OF 2024**

Mrs. Achala Rajesh Agarwal (Nominee)
Through Mr. Lakvinder Atma
Singh Randhawa
constituted attorney for
Achala Rajesh Agarwal

: Appellant/Applicant
(Defendant No.1B)

Vs.

Vinod Narayandas Punjabi and ors. : Respondents.

**ALONG WITH
APPEAL NO.28 OF 2024
IN
INTERIM APPLICATION (L) NO.22770 OF 2023
IN
SUIT NO.582 OF 2013
WITH
INTERIM APPLICATION (L) NO.2498 OF 2024
IN
APPEAL NO.28 OF 2024**

Sachi Shrivastava (Adopted Daughter) : Appellant/Applicant
(Defendant No.1A)

Vs.

Vinod Narayndas Punjab and ors. : Respondents.

Mr. Vishal Kanade a/w Mr. Monil Punjabi i/by Vinod Sharma for the Appellant in Appeal (L) Nos. 1272/2024 and 1280/2024 (Achala Agarwal).

Mr. Prathamesh Bhargude a/w Mr. Sumit Sonare i/by Mr. Aditya Raktade for the Appellant in Appeal No.28 of 2024 and for Respondent No.2 in Appeal (L) Nos. 1272/2024 and 1280/2024.

Mr. Anoshak Daver i/by Mr. Mayur Shikhare for Respondent No.1 in all the Appeals.

Mr. Shanay Shah a/w Mr. Sanmish Gala and Mr. Jigar Shah i/by Markand Gandhi & Co. for Respondent No.4 in all the Appeals.

Mrs. S. M. Vengurlekar – Section Officer from Court Receiver’s office present.

**CORAM : DEVENDRA KUMAR UPADHYAYA, CJ. &
ARIF S. DOCTOR, J.
DATE : 02nd FEBRUARY, 2024**

P.C. :

1. All the above-mentioned Appeals arise out of the same facts and impugn the same order i.e. order dated 10th January 2024. It is thus that all the captioned Appeals are being disposed of by this common order.

2. In order to give context to the rival contentions, it is useful to set out the broad facts. For the sake of ease, reference to the Parties in this order shall be as the Parties are arrayed in Appeal (L) No.1280 of 2024.

3. The disputes and differences between the Parties are in respect of Flat No. B-35/108, 1st floor, Sheetal, Apna Ghar Unit No.9 CHS Ltd, Swami Samarth Nagar, Lokhandwala Complex, Andheri (West), Mumbai – 400 0053 (“the said flat”). Respondent No.1 i.e. the Plaintiff in the captioned Suit claims

entailment to the said flat on the basis of a Memorandum of Understanding ("MOU") entered into by Respondent No. 1 with one Smt. Asha Ganesh Shrivastava (since deceased) stated to be the owner of the said flat. The captioned Suit has been filed *inter alia* seeking specific performance of the MOU.

4. Since the building in which the said flat is housed was undergoing redevelopment, Respondent No. 1 took out Interim Application No. (L) No.22770 of 2023 seeking the following reliefs, viz.

- "a. *The Court Receiver may be appointed to take the possession of the suit premises i.e. Flat No.B-35/108, 1st Floor, Sheetal, Apna Ghar Unit No.9 CHS Ltd, Swami Samarth Nagar, Lokhandwala Complex, Andheri (West), Mumbai – 400 053 admeasuring about 770 sq.ft. terrace area attached to the said flat from Defendant Nos.1(A) and 1(B).*
- b. *The Court Receiver may be appointed to take the original Title Deed and original Share Certificate of the suit premises from Defendant 1(B).*
- c. *The Court Receiver may be directed to handover the possession of the suit premises to Defendant*

No.3 for redevelopment of the Defendant No.2 property.

- d. The Court Receiver may be appointed to execute Permanent Alternate Accommodation Agreement (PAAA) with the Defendant No.3 as per the terms of Development Agreement dated 19th January, 2023.*
- e. The Court Receiver may be appointed to receive back the possession from Defendant No.3 of Permanent Alternate Accommodation Flat, once the Re-Development of Defendant No.2 society is completed.*
- f. The Defendant No.3 may be directed to deposit the cheques pertaining to Monthly Displacement Compensation, Onetime Relocation Expenses, Onetime Brokerage Charges and Hardship Compensation towards the suit premises with the Court Receiver as per the terms of Development Agreement dated 19th January, 2023.”*

The Appellant in Appeal No. (L) No.1280 of 2024 (Defendant No. 1(B) to the Suit) claims entitlement to the said flat under a Will stated to be of the deceased. Conversely, Respondent No. 2 in Appeal (L) No. 1280 of 2024 who is the Appellant in Appeal

No.28 of 2024 (Defendant No. 1(A) to the Suit) claims to be the adopted daughter of the deceased and thus claims entitlement to the said flat on this basis. It was thus that the Appellant in Appeal (L) No.1280 of 2024 took out an Interim Application *inter alia* seeking payment of transit rent, execution of the Permanent Alternate Accommodation Agreement ("PAAA") as also that possession of the redeveloped flat be handed over to the Appellant.

5. Both the aforesaid Interim Applications were disposed of by the Impugned Order by which the Learned Judge directed as follows, viz.

"(i) The Court Receiver of this Court is appointed to take possession of the suit Flat. Both, Defendant Nos.1A and 1B shall, either personally or through their Attorneys, remain present at the suit flat on 15 January 2024 at 11.00 a.m. and handover possession of the suit Flat to the Court Receiver.

(ii) Defendant No.3 shall execute PAAA with the Court Receiver on same terms and conditions and in the same format as is executed with the other flat owners.

- (iii) Defendant No.3 shall pay various amounts arising out of redevelopment process including the monthly displacement compensation in respect of the suit flat, by depositing the same in this Court, which shall be invested in fixed deposit.*
- (iv) The Court Receiver shall take over possession of the redeveloped Flat as and when offered by Defendant No.3 and shall apply to this Court for seeking further directions about arrangements to be made in respect of the redeveloped flat.*
- (v) After taking possession of the suit flat, the Court Receiver shall make an Inventory of the movable articles in the suit flat and Defendant Nos.1A and 1B shall co-operate with the Court Receiver and take back possession of the said movable articles so that the suit flat can be demolished for carrying out the redevelopment process.*
- (vi) Within one week from the date of taking of possession of the suit flat, the possession thereof shall be handed over to Defendant No.3."*

6. Mr. Kanade learned counsel appearing on behalf of the Appellant in Appeal (L) Nos.1272 of 2024 and 1280 of 2024, at the outset, fairly submitted that possession of the said flat was not taken from his client who, he submitted, was a resident of

the United States. He however submitted that since (a) the said flat was bequeathed to his client and (b) the statement made by his client, as recorded in the order dated 13th April 2023 that his client shall not sell, encumber, part with possession and/or create any third party right, title and/or interest in respect of the said flat, the PAAA ought to be entered into with his client as also the benefits of the redevelopment i.e. transit rent, corpus etc. should be made payable to his client.

7. *Per contra*, Mr. Bhargude, appearing on behalf of the Appellant in Appeal No.28 of 2024 (Respondent No.2 to Appeal (L) Nos.1272 of 2024 and 1280 of 2024) submitted that Mr. Kanade's client did not have any right *in preasenti*. He submitted that if at all, the right would accrue only on the grant of probate/letters of administration in respect of the Will propounded by Mr. Kanade's client which he strongly disputed. Conversely, he submitted that there was no dispute nor challenge till date to the fact that his client was the adopted daughter of the deceased. He submitted that the lock of the said

flat was infact opened with the key which was provided by his client and thus his client had a present and subsisting right qua the possession/entitlement of the said flat. Basis this he submitted that the benefits of redevelopment and the PAAA ought to be entered into with his client.

8. We have heard the learned counsel and as observed by Learned Judge in the Impugned Order the law pertaining *inter alia* to whom transit rent and the other benefits of redevelopment has been well settled by catena of judgments including in the matter of ***Vipul Fatehchand Shah Vs. Nav Samir Cooperative Housing Society & ors.***¹ which reiterates that payment of transit rent and other benefits of redevelopment are to be made to a person from whom possession of the flat in question is taken. This would include the person from whom possession is taken being handed over the flat in the redeveloped building as well. In the present case as correctly observed by the Learned Judge, there exist serious disputes qua title/entitlement to the said flat. However, and crucially, in the

1 Order dated 8th October 2023 in Commercial Appeal No.100 of 2023

present case it is clear that the said flat was lying locked and unoccupied. Thus, the question of payment of transit rent and/or displacement allowance to anyone at this stage would not arise nor would the question of with whom the PAAA is to be executed presently arise in view of the rival claims. Given this, we find that the Learned Judge has considering all these facts and balancing the equities passed the Impugned Order. We find absolutely no infirmity in the said order.

9. For the aforesaid reasons, the captioned Appeals are dismissed.

10. In view of the dismissal of the Appeals, the Interim Applications do not survive and the same are also disposed of.

(ARIF S. DOCTOR, J.)

(CHIEF JUSTICE)