

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**ORDINARY ORIGINAL CIVIL JURISDICTION**  
**APPEAL NO. 98 OF 2023**  
**IN**  
**INTERIM APPLICATION NO. 1609 OF 2023**  
**IN**  
**SUIT NO. 443 OF 2023**

Heena Parvez Khokar & Anr.

... Appellants  
(Org. Plaintiffs)

**V/s.**

Khurshid Mohammed Nazir  
Khokar & Anr.

... Respondents  
(Org. Defendants)

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Mr. Ajeet Manwani, Mr. Faisal Vora and Prasanna Lakshmi i/by A  
and A Legal for Appellants.

Mr. Manoj Shukla and Mr. Vinod Kumar Shukla for Respondents.

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**CORAM : DEVENDRA KUMAR UPADHYAYA, CJ. &  
ARIF S. DOCTOR, J.**

**RESERVED ON : 8<sup>th</sup> APRIL, 2024**

**PRONOUNCED ON : 12<sup>th</sup> APRIL, 2024**

**P.C. : (PER ARIF S. DOCTOR)**

1. The present Appeal impugns an order dated 30<sup>th</sup>  
June, 2023, by which, the Appellants' Interim Application in the  
captioned Suit came to be dismissed.

2. The primary grievance of Mr. Manwani, learned counsel appearing on behalf of the Appellants is that the Impugned Order is a short and cryptic order and does not consider the various contentions raised by the Appellants in support of the Interim Application. Mr. Manwani points out that the Appellants are the owners of the suit flat being Flat No.4, Building No. C 2, Sneh CHS Ltd, Khira Nagar, Santacruz West, Mumbai 400054. It is his contention that the said flat has been gifted to the Appellants by their father one Mehboob. It is the Appellants' contention that they had permitted the Respondents, who are the aunt and uncle of the Appellants, to jointly reside in the suit flat as per the request of the Respondents. However, post March, 2022, the Respondents prevented the Appellants from entering upon the suit flat after the father of the Appellants had traveled overseas for treatment in respect of a rare heart condition, from which he suffers from.

3. Mr. Manwani pointed out that the Respondents had not even filed a written statement till date in the said Suit and

further pointed out that the Respondents had premised their entire case to oppose the Interim Application on patently false, inconsistent and untenable grounds. Amongst the false contentions taken by the Respondents, he pointed out that the Respondents had contended that they were residing in the suit flat since the year 1999, whereas, he pointed out from the record that the suit flat had in fact been rented out by the Appellants to various entities from the year 1997 to 2005. He further pointed out that all the necessary maintenance and property taxes, including parking charges etc. in respect of the suit flat were being borne by the Appellants at all times even till date. He submitted that the Respondents did not have a semblance of right much less title to the suit flat and that the Appellants' occupation and use of the same was patently illegal. He submitted that it was thus that the Appellants had in the Interim Application sought for the following reliefs since they were at all time jointly residing with the Respondents in the suit flat;

*"a. That pending the hearing and final disposal of the Suit, this Hon'ble Court may issue mandatory directions to the Respondents to allow the Applicants and their parents to jointly stay in the Suit Flat along with the Defendants on such terms*

*and conditions as may appear just and proper to this Hon'ble Court.*

- b. That cost of this Interim Application be provided for; And*
- c. Such other & further reliefs as this Hon'ble Court may deem fit, be provided for."*

4. Mr. Shukla, learned counsel appearing on behalf of the Respondents, on being asked by the Court to point out the basis on which the Respondents were residing in the suit flat, was unable to point out a single document of title in respect of the suit flat or the basis on which they were in use and occupation of the same. Learned counsel submitted that there was an oral agreement for sale of the suit flat between the Appellants' father and the Respondents, pursuant to which, monies had in fact been paid to the father of the Appellants. He pointed out that a Suit for specific performance of this agreement was pending before the Dindoshi Court. He was, however, unable to answer as to how the Respondents claim to have been residing in the said flat since the year 1999 when the same was in fact let out to third parties from 1997. The Respondents were also unable to point out any maintenance, property taxes and property charges paid by them in respect of the suit flat when asked by this Court.

5. We are conscious of the limited jurisdiction of this Court to interfere with interlocutory orders. However, in the facts of the present case, we find that the Appellants have made out a compelling case which warrants interference in Appeal. The Appellants have indeed established a strong *prima facie* case that the Respondents appear to be rank trespassers. The Impugned Order, we find, does not deal with the various documents and contentions of the Appellants on the basis of which, the interim prayers were sought. Hence, we find that the Appellants have made out a case for the grant of relief in Appeal. Hence, we pass the following order;

### **O R D E R**

- i. The Impugned Order dated 30<sup>th</sup> June, 2023 is hereby quashed and set aside.
- ii. The Interim Application is remitted back to the learned Judge before whom the assignment presently lies to hear and decide the Interim Application after considering the documents relied upon by the Appellants.

- iii. The hearing of the Suit is expedited.
- iv. It is noticed that despite the fact that the Suit is of the year 2023, no written statement has been filed within the prescribed time. Hence, the Suit to proceed *ex parte*.
- v. The learned Judge to issue appropriate directions for the expeditious hearing and disposal of the captioned Suit.

6. Appeal is disposed of in the aforesaid terms.

7. We make it clear that the learned Judge when hearing and deciding the Interim Application, shall do so uninfluenced by the observations made in this order.

**(ARIF S. DOCTOR, J.)**

**(CHIEF JUSTICE)**