IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.526 OF 2019

Anil Meghraj Wadhare & Anr. ...Appellants

Versus

Philomena Archie Miranda & Ors. ...Respondents

Ms. Neeta Jain a/w Ms. Srushti Patil & Mr. S. S. Kharat i/by Mr. Alochan Naik for the Appellants.
None for the Respondents.

CORAM : JITENDRA JAIN, J.
DATE : 19 DECEMBER 2025

ORAL ORDER:

1. On 13 November 2025, the appellants-plaintiffs were directed to obtain a valuation report valuing the whole property and 1/6th share of the respondents-defendants.

2. The learned counsel for the appellants-plaintiffs have filed the report and the 1/6th share is valued at Rs.57,38,000/-. The valuation report is taken on record.

3. As observed by the Court in the order dated 13 November 2025, and the earlier orders passed from time to time by this Court, the respondents-defendants have chosen not to appear before this Court in this appeal. Therefore, after exhausting all modes of service, the Court has no option, but to hear the present appeal in the absence of the respondents-defendants.

4. Admittedly, the suit property with which the Court is concerned is a subject matter of the partition suit, in which the appellants-plaintiffs have 5/6th share and the respondents-defendants

have 1/6th undivided share. The Corporation has demolished the suit property under Section 354 of the Mumbai Municipal Corporation Act, 1888. There is an obligation on the landlord to rehabilitate the tenants and, therefore, timely development of the property is very crucial.

5. The appellants-plaintiffs in their Motion before the City Civil Court had prayed that they be permitted to develop the property. However, the learned Judge has refused the said prayer since the suit property consists of 5/6th share of the appellants-plaintiffs and 1/6th share of the respondents-defendants and it is not possible to demarcate the two portions. However, the learned Judge has restrained respondents-defendants to create any third party rights with respect to 1/6th share.

6. It is on the above backdrop that the present appeal is filed for the prayer that the appellants-plaintiffs be permitted to develop the property by securing respondents-defendants.

7. I have heard learned counsel for the appellants-plaintiffs.

8. Admittedly today, the property is lying vacant. The structure has been demolished by the Corporation and the occupants of the structure are waiting to come back as and when the property is redeveloped. The appellants-plaintiffs are holding 5/6th undivided share in the suit property which constitutes majority that is more than 85%. The property can certainly not be demarcated in the ratio of 5/6th and 1/6th and even assuming the 1/6th portion of any one corner is kept aside that portion will have no value or potential to be developed. Therefore, keeping 1/6th portion undeveloped will not be in the interest of the respondents-defendants. This may not be in the interest of the appellants-plaintiffs also, since the development may not happen

properly if 1/6th share is kept aside. At the same time, the partition suit is pending before the City Civil Court and the respondents-defendants has to be secured, if any, permission is granted for development of the property.

9. Keeping in mind the above factors, the Court feels that the appellants-plaintiffs be permitted to develop the whole of the property, including 1/6th share which is a subject matter of the partition suit before the City Civil Court. This will help all the stakeholders in proper development of the property. Any delay in the development of the property because of the pending litigation and non-grant of prayer clause (b) of Notice of Motion would be against the interest of the tenants who are waiting to come back and occupy the premises. The only way, then to secure the respondents-defendants is to keep aside in monetary terms certain amount or to keep aside certain portion of the constructed area which can be realised for recovering the monetary claim, if any, and as and when the final suit is disposed of.

10. The valuation report values 1/6th share at 57,38,000/-. The 1/6th share is about 47 square meters i.e. approximately 470 square feet. Therefore, this Court is of the view that the respondents-defendants interest can be secured, if the appellants-plaintiffs keeps constructed flat admeasuring approximately 500 square feet (1 BHK) as a security which would be subject to the outcome of the suit pending before the City Civil Court. In addition to the said flat on which no third party interest of any nature whatsoever will be created by the appellants-plaintiffs till the disposal of the suit, the appellants-plaintiffs would also deposit a sum of Rs.25 lakhs with the City Civil Court and the Registry of the City Civil Court will deposit the said amount in a fixed deposit of a nationalised bank on which interest will be earned.

The amount of Rs.25 lakhs to be deposited within eight weeks from today.

11. The above arrangement of security i.e. by way of one flat and Rs.25 lakhs deposit does not mean that the Court recognises the rights of the respondents-defendants to the extent of the value of the flat and/or the amount of deposit. The order of security is passed so that if at the end of the litigation, the Court finds any amount is payable or any property is to be given to the respondents-defendants then the said respondents-defendants need not worry about the recovery. This would avoid delay in enjoying the fruits of the decree if at all, the decree is passed in favour of the respondents-defendants without going into the execution proceedings. The City Civil Court will do the exercise of balancing the rights at the end of the suit by considering the value of the flat and the deposit made and interest accrued thereon.

12. The learned counsel for the appellants states that the respondents-defendants are not appearing before the Trial Court, since last one and half year and, therefore, the proceedings are not going forward. The Trial Court to ensure that if there is a consistent non-appearance on behalf of the respondents-defendants then the Court will be free to decide the suit *ex-parte.* By not appearing before the Trial Court, a party cannot delay the matter. If any adjournments are sought on frivolous grounds then the learned Trial Judge will be free to impose heavy costs on any of the party seeking adjournment.

13. The appellants-plaintiffs to make application to the Trial Court for expediting the matter in the light of the reasons mentioned above, namely non-cooperation by the respondents-defendants, tenants waiting to be rehabilitated, delay in development of the property and

the opportunity costs thereof. The learned Trial Court will consider such application and pass appropriate orders in accordance with law.

14. The appellants-plaintiffs to make appropriate applications for development of the property to the Corporation and the Corporation will not withhold the permissions/approvals by insisting upon no objection from the respondents/defendants who constitute 1/6th share. It is made clear that other other than this issue, the Corporation may take appropriate decisions in accordance with law insofar as the permission/approvals are concerned and this Court has not opined on any other issue.

15. The prayer clause (b) of the Notice of Motion No.1643 of 2011 is allowed in above terms save and except the following portion "with or".

16. The Appeal is disposed of in above terms.

[JITENDRA JAIN, J.]

(This order is corrected as per speaking to the minutes of order dated 22 December 2025)

Signed by: Sayyed Saeed Ali
Designation: PA To Honourable Judge
Date: 22/12/2025 18:15:30