

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO.2240 OF 2025

Amal Dilip Desai

...Petitioner

Versus

Nilesh Dilip Desai & Anr.

...Respondents

Ms. Shweta Agarwal a/w Ms. Aishwarya Shinde, for the Petitioner.

Mr. Aditya Shiralkar and Mr. Ashish Gatagat, for the Respondent No.1.

Mr. Aadil Parsurampurua a/w Mr. Ameya Khot i/b M/s. Legal Vision, for the Respondent No.2.

CORAM: MADHAV J. JAMDAR, J.

DATED: 2nd APRIL 2025

P.C.:

1. Heard Ms. Shweta Agarwal, learned Counsel appearing for the Petitioner, Mr. Aditya Shiralkar, learned Counsel appearing for the Respondent No.1 and Mr. Aadil Parsurampurua, learned Counsel appearing for the Respondent No.2.

2. By the present Writ Petition the challenge is to the legality and the validity of the Order dated 6th September 2022 passed by the learned Appellate Bench of the Small Causes Court, Mumbai in Miscellaneous Appeal No.70 of 2022 (filed by the Petitioner) and Miscellaneous Appeal No.71 of 2022 (filed by the Respondent No.1). The challenge in the said Appeals was to the Order dated 10th March 2022 passed by the learned Judge, Small Causes Court, Mumbai below Exhibit-11 and 25 in R.A.D Suit No.31 of 2022.

3. The said R.A.D. Suit No.31 of 2022 is filed by the Respondent

No.1 seeking declaration of his tenancy and alternatively it is prayed that the Respondent No.1 i.e. Defendant No.2 be declared as joint tenant alongwith the Petitioner. The Respondent No.2 i.e. Defendant No.1 is the landlord/Developer of the suit property.

4. The operative part of the said Order dated 10th March 2022 passed by the learned Judge, Small Causes Court, Mumbai reads as under :-

“ORDER

*1. Application at **Exh.11** is partly allowed.*

2. Defendant Nos.1 and 2 are jointly and severally restrained temporarily from dealing with right, title or interest in the suit premises till final decision of the suit.

3. Defendant No.1 is directed to pay transit rent to the plaintiff on par with the other tenants based on the carpet area as per minutes of the order till final decision of the suit.

*4. Application filed by defendant No.1 at **Exh.25** is rejected.*

5. The Petitioner (Defendant No.2) as well as the Respondent No.1 (Plaintiff) filed separate Appeals bearing Appeal No.70 of 2022 as well as Appeal No.71 of 2022 respectively challenging the said Order dated 10th March 2022. The learned Appellate Court passed the following operative Order on 6th September 2022 reads as under:-

“ORDER

1. M. Appeal No. 70 of 2022 stands dismissed with costs.

2. M. Appeal No. 71 of 2022 is partly allowed.

3. The order of injunction as per clause 2 of operative part is confirmed.

4. Clause 3 of operative part is modified as under ..

"Defendant no.1 is directed to pay transit rent to plaintiff at par with other tenants based on carpet area till handing over possession of premises in new building on temporary basis as per the clause below ".

5. Following additional clause is incorporated in the order as 3A:-

3A- After completion of redevelopment, defendant No.1 shall hand over possession of the proportionate premises in newly constructed building, in lieu of the suit premises, to the plaintiff strictly on temporary basis subject to final decision of RAD Suit No. 31 of 2022 and without prejudice to the rights and contentions of both the parties.

6. Original Judgment be kept in M. Appeal No. 70 of 2022 and copy of it be kept in M. Appeal No. 71 of 2022.

7. Inform the trial court accordingly."

6. Thus, Appeal filed by the present Petitioner has been dismissed and the Appeal filed by the Respondent No.1 has been partly allowed in the above terms.

7. It is an admitted position that during the pendency of this Writ Petition the Respondent No.2 has handed over possession of the redeveloped premises to the Respondent No.1 in compliance with the

order passed by the learned Appellate Court. In fact it is the contention of the Respondent No.1 that in view of the subsequent development the Writ Petition has become infructuous, even on merits also.

8. It is an admitted position that the original tenant of the suit premises is the father of the Petitioner and Respondent No.1. He passed away in the year 1993. Thereafter, the tenancy was transferred in favour of mother. The mother passed away in the year 2003. In the meanwhile during lifetime of the mother the present Petitioner shifted to USA in the year 1998 and acquired citizenship of USA.

9. It is the submission of Ms. Shweta Agarwal, learned Counsel appearing for the Petitioner that even during the lifetime of the mother rent receipt has been transferred in favour of the Petitioner. However, admitted position is that the original tenancy was in the name of the father of the Petitioner and Respondent No.1. It is further admitted position that after the death of the father the rent receipt was transferred in the name of their mother. Therefore, there is substance in the contention of the learned Counsel appearing for the Respondent No.1 that unilateral transfer of tenancy in favour of the Petitioner is not in accordance with provisions of the Maharashtra Rent Control Act, 1999.

10. There is also substance in the contention that, when the original tenant- mother passed away, the Petitioner was residing at USA.

Therefore, the Petitioner cannot take benefit of Section 7(15) of the Maharashtra Rent Control Act, 1999.

11. Accordingly, no interference is warranted in the writ jurisdiction of this Court in the impugned order and the Writ Petition is dismissed, however, with not order as to costs.

12. However, as the said R.A.D. Suit No.31 of 2022 is pending the Respondent No.1 shall not transfer the flat allotted by the Respondent No.2 to the Respondent No.1 in lieu of the tenanted premises without taking permission of the learned Trial Court.

13. It is made clear that, the observations made in this order as well as made in the orders passed by the learned Trial Court as well by the learned Appellate Court are made for the purpose of passing interim relief and the suit will be decided without influenced by said *prima facie* observations and the same will be decided on its own merits.

[MADHAV J. JAMDAR, J.]