



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 13282 OF 2024

Macrotech Developers Private Limited

..Petitioner

Versus

Anuya Sunil Murkar & Ors

...Respondents

Mr. Amogh Singh, with Rahul Arora & Akash Gupta, i/b Jeet Gandhi,
for the Petitioner.

Mr. Shailendra S. Kanetkar, for the Respondent.

CORAM: N. J. JAMADAR, J.

RESERVED ON : 30th JUNE 2025

PRONOUNCED ON: 3 JULY 2025

JUDGMENT :

1. Rule. Rule made returnable forthwith. With the consent of the learned Counsel for the parties, heard finally.

2. The Petitioner is aggrieved by a judgment and order dated 7th November 2023, passed by the Appellate Bench of the Court of Small Causes in Miscellaneous Appeal Nos. 81 of 2023 and 86/2023, whereby while partly allowing the Appeal, preferred by the Petitioner (Miscellaneous Appeal No. 81 of 2023), the Appellate Bench directed Defendant No.8/proposed Defendant No.9 to deposit an amount of Rs.50,000/- per month with effect from 3rd October 2022, towards the Temporary Alternate Accommodation charges for Respondent No.1-

original Plaintiff and to furnish solvent surety of Rs.50,000/-, for the due compliance of the directions contained in the said order.

3. Respondent No.1 instituted the Suit for a declaration that the Respondent No.1 and Sindhu Shivalkar (D1) were jointly entitled to tenancy rights and have equal right, title and interest in the suit premises. Late Raman Rajwadkar, her father was the tenant of the suit premises of which Defendant Nos. 2 to 7 were the original landlords. The Defendant No.8 has subsequently acquired interest in the suit premises and has illegally issued the rent receipts in the joint names of late Raman Rajwadkar and the Defendant No.1. The Plaintiff was in joint possession of the suit premises. However, the Defendant No.1 has unlawfully put another lock to the suit premises. Thus, the Plaintiff sought declaratory and injunctive reliefs.

4. An Application for temporary injunction was filed in the said Suit. By an order dated 4th August 2023, the learned Judge, Court of Small Causes, was persuaded to allow the Application and restrain the Defendant No.8 and/or proposed Defendant No.9, the Petitioner herein, from demolishing the suit premises, from acting upon the Permanent Alternate Accommodation Agreement dated 3rd October 2022 executed in favour of original Defendant No.1, and also direct the Defendant No.1 to deposit in Court the monetary consideration, which has been

received by Defendant No.1 from the Defendant No.8 and/or proposed Defendant No.9.

5. Being aggrieved, the Petitioner as well as Defendant No.1 preferred Miscellaneous Appeals before the Appellate Bench.

6. By the impugned order, the Appellate Bench was persuaded to partly allow the Appeal preferred by the Petitioner, to the extent of setting aside the order completely restraining the Defendant No.8/proposed Defendant No.9 from demolishing the suit premises and carrying out the development. The Appellate Bench, however, directed Defendant No. 8/proposed Defendant No.9 to deposit an amount Rs.50,000/- per month, with effect from 3rd October 2022, till the deposit of the keys of the new premises in lieu of the suit premises, towards Temporary Alternate Accommodation charges for the Plaintiff.

7. Mr. Amogh Singh, the learned Counsel for the Petitioner, would urge that the Appellate Bench has fixed the quantum of transit rent/charges towards the Temporary Alternate Accommodation in an arbitrary manner. The Appellate Bench, in terms, recorded that there was no material on the basis of which it could determine the interim transit rent. Yet, by misconstruing the contention of the Petitioner that it had incurred expenses to the tune of Rs.30 Crores towards the transit rent and other charges for about 265 tenants, fixed transit rent at the Rs.50,000/- per month. The Petitioner had already paid a sum of

Rs.4,52,000/- to the Defendant No.1 towards the transit rent and other charges, like the amount paid to other tenants. The transit rent has been paid to all other tenants at the rate of Rs.18,000/- per month. The Petitioner has already paid the transit rent for two years and other charges to Defendant No.1, who was certified by MHADA as tenant, and also in possession of the suit premises. Hence, the direction for payment of transit rent at the exorbitant rate of Rs.50,000/- per month is clearly penal imposition on the Petitioner and discriminatory also as all other tenants have been paid transit rent at the rate of Rs.18,000/- per month. Therefore, the impugned order deserves to be quashed and set aside to the extent it directs payment of transit rent to the Plaintiff at the rate of Rs.50,000/- per month.

8. Mr. Singh placed reliance on the copies of the letters and receipts evidencing payments to Defendant No.1 and other tenants, to bolster up the submission that all other tenants have been paid transit rent at the rate of Rs.18,000/- per month.

9. In opposition to this Mr. Kanetkar, the learned Counsel for the Respondent Nos. 1 to 5, would submit that the Petitioner made no effort to place any material before the Appellate Bench. Thus, the Petitioner cannot be permitted to assail the legality and correctness of the impugned order on the basis of the material which is placed before this Court, for the first time, and of which the Appellate Bench had no

benefit. Therefore, the Petitioner be directed to approach the Trial Court and satisfy the Trial Court regarding the factum of payment to the Defendant No.1 and payment of transit rent at the rate of Rs.18,000/- per month to the other tenants. The alleged PAAA is silent about the payment of transit rent. Moreover, the said agreement was executed by Defendant No.1 in breach of an interim order not to enter into any agreement.

10. Mr. Kanetkar would urge, in any event, the Appellate Bench has taken care to provide that the direction is of interim nature and it was open for the parties to adduce evidence during the trial so that the Trial Court can determine the appropriate amount towards Temporary Alternate Accommodation charges. Thus no interference is warranted in the impugned order, urged Mr. Kanetkar.

11. The challenge in this Petition is confined to the directions by the Appellate Bench to pay transit rent / temporary alternate accommodation charges to the Plaintiff, especially the quantum thereof. The Appellate Bench, as is evident from the impugned order, found itself not equipped with the material to determine the reasonable rate at which the transit rent ought to be ordered to be paid by Defendant No.8 / proposed Defendant No.9. The Appellate Bench, thus, considered it appropriate to base its determination on the contentions in the affidavit in reply of proposed Defendant No.9 that, it had spent around Rs.30

Crores towards the payment of two years advance rent, shifting etc. for 265 tenants. Thus, the entitlement per tenant was computed at Rs.47,700/- p.m. On such prima facie appraisal, the Appellate Bench was persuaded to determine the charges towards temporary alternate accommodation at the rate of Rs.50,000/- per month.

12. Whether the aforesaid approach of the Appellate Bench is justifiable ? For an answer, it is necessary to note the prima facie findings which the Appellate Bench recorded as regards the dispute between the Plaintiff and Defendant No.1. It was found, the Plaintiff has made out a prima facie case that she was one of the heirs of original tenant; Plaintiff was in joint possession of the suit premises; defendant No.1 had entered into agreement with Defendant No.8/proposed Defendant No.9 in breach of an injunction order and the question as to whether Defendant No.1 was certified by MHADA as a tenant and occupant of the suit premises, was debatable. Thus, the Plaintiff was entitled to receive the benefits emanating from the redevelopment in her capacity as one of the joint tenants with Defendant No.1.

13. The Appellate Bench, however, found that the order restraining the demolition and redevelopment of the property in which the suit premises was situated, could not be sustained as it had the propensity to cause prejudice to third parties. In its endeavour to protect the rights of the Plaintiff, the Appellate Bench fashioned the aforesaid remedy.

14. To the extent of enforcement of the rights qua Defendant No.1 and the protection thereof by appropriate interim orders, the approach of the Appellate Bench cannot be faulted at. However, the aspect of the nature of the liability of Defendant No.8 /proposed Defendant No.9 cannot be lost sight of. The proposed developer cannot be saddled with the liability far beyond the contractual obligations with the co-tenants who are similarly circumstanced. Nor can disputes inter se Plaintiff and Defendant No.1, who have, in a sense, unity of possession and community of interest in one demised premises, make the developer liable to satisfy the claim of the joint tenants, independently. The liability of the developer to pay transit rent and other charges qua each unit, in accordance with the terms of the contract, would be one and indivisible.

15. Ordinarily, the transit rent is to be paid to a person who is dishoused from the premises in the wake of redevelopment. Thus, the contention on behalf of the Petitioner that it entered into PAAA with Defendant No.1 as Defendant No.1 was allegedly certified as the tenant by MHADA and also in possession of the subject premises cannot be brushed aside completely as an act in derogation of the contractual obligations of the proposed Defendant No.9.

16. In the case at hand, proposed Defendant No.9 claimed that he had already paid a sum of Rs.4,52,000/- to the Defendant No.1 like

other co-tenants. It is true, to substantiate the said claim, the Petitioner tendered the documents, before this Court.

17. Mr. Kanetkar was justified in advancing criticism against the reliance on the said documents, for the first time, before this Court. However, the Court cannot loose sight of the fact that it does not appear that the Appellate Bench had put the parties to notice that while modifying the order of the Trial Court, it proposed to fix the transit rent. Therefore, the failure on the part of the Petitioner to place those documents on record before the Appellate Bench cannot be arrayed against the Petitioner.

18. In the circumstances of the case, having regard to the fact that the Appellate Bench had determined the transit rent on the basis of the contentions in the affidavit in reply by resorting to an estimate of the expenditure per tenant, and, conversely, the Petitioner has placed on record documents, which prima facie lend credence to the Petitioner's version that the transit rent has been paid @ Rs.18,000/- per month and the amount has already been disbursed to Defendant No.1, in my considered view, the issue warrants determination based on investigation into facts. The parties deserve an opportunity to produce the documents to substantiate their contentions.

19. Moreover, if the Court comes to the conclusion that the Petitioner had already paid the transit rent to Defendant No.1, then the aspect of

appropriate orders qua Defendant No.1 in the nature of directions to bring back the said amount or portion thereof, may also warrant determination.

20. For the foregoing reasons, I deem it in the fitness of things to remit the application for temporary injunction back to the Trial Court, for the limited purpose of determining the rate at which the transit rent / temporary alternate accommodation charges are to be paid by the Petitioner/proposed Defendant No.9, and, whether the Petitioner has, in fact, paid the said amount to Defendant No.1, and, if yes, to pass consequential orders so as to balance the equities between the Plaintiff and Defendant No.1. The Petition, therefore, deserves to be partly allowed.

21. Hence, the following order :

ORDER

- (i) The Writ Petition stands partly allowed.
- (ii) The directions contained in clause 1(b) of the impugned order dated 7 November 2023, stands quashed and set aside.
- (iii) Injunction notice (Exh.56) stands remitted back to the Trial Court for afresh determination :

(a) of the rate at which the temporary alternate accommodation charges be paid by Defendant No.8 / proposed Defendant No.9.

(b) whether the Petitioner has already paid the temporary alternate accommodation and other charges to Defendant No.1, and, if that is the case, to pass appropriate orders so as to balance the equities between Plaintiff and Defendant No.1.

(iv) Learned Judge, Court of Small Causes, shall allow the parties to file further Affidavits and/or documents in support of their respective contentions and shall decide the aforesaid issue after providing an effective opportunity of hearing to the parties, as expeditiously as possible, and, preferably, within a period of four months from the date of communication of this order.

(v) By way of abundant caution, it is clarified that the aforesaid observations are confined to determine the legality, propriety and correctness of the impugned directions and this Court may not be understood to have expressed any opinion on the merits of the matter.

(vi) Rule made absolute to the aforesaid extent.

(vii) No costs.

[N. J. JAMADAR, J.]