

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7523 OF 2024

SANTOSH
SUBHASH
KULKARNI

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Ivan Santosh Fernandes and anr.

...Petitioners

Versus

Ramanlal Shah HUF through its Karta

Dharmesh B Shah and ors.

...Respondents

Mr. Rohit Gupta, a/w Kinnar Shah, Brijesh Nittekar, Saurabh Jain i/b Diya Shah Associates, for the Petitioners.

Mr. Tanmay Shembavanekar, i/b Shashank Mangle, for Respondent No.1.

Mr. Saurabh Bhutala, i/b Siddesh Bane, for Respondent No.3.

Mr. Harshad Sathe a/w Shubham Gangan, for Respondent Nos.2, 4, 5 and 6.

CORAM: N. J. JAMADAR, J.

DATED : 2nd JANUARY, 2025

ORDER:-

1. Heard the learned Counsel for the parties.
2. The challenge in this petition is to an order dated 19th April, 2024 passed by the learned Judge, City Civil Court, Mumbai, whereby the motion made by the plaintiff for dispensing with pre-institution mediation was rejected opining that no urgency was made out.
3. On 10th June, 2024 this Court while issuing notice to the respondents – defendants, *inter alia*, directed that the developer shall not act any further under the redevelopment scheme in so far as Shop No.2.

4. The parties have filed affidavits-in-reply. In the affidavit-in-reply filed on behalf of respondent No.3 – Developer, in paragraph 23(k) (page 204) it is *inter alia* affirmed that the Permanent Alternate Accommodation Agreement (“PAAA”) was executed with respondent Nos.1 and 4 on 10th June, 2024 itself.

5. The parties are at issue as to whether PAAA was executed after the order passed by this Court on the very day i.e. 10th June, 2024.

6. In the backdrop of the nature of the challenge in the instant petition, this Court need not delve into the disputed questions of facts especially when the suit has not been heard by the trial court even for ad-interim reliefs. All the disputed questions ought to be first agitated before and adjudicated by the trial court. This proceeding cannot be converted into a proceeding before a Court at the first instance.

7. The fact that on 10th June, 2024 PAAA has allegedly been executed by defendant No.3 in favour of defendant Nos.1 and 4, in itself, indicates that in the facts of case, the suit contemplated an urgent interim relief. The said circumstance singularly negates the contention that there was no urgency. It would, therefore, be in the fitness of things that the petitioner – plaintiff is heard on the aspect of grant of interim reliefs

dispensing with pre-institution mediation. I am, therefore, inclined to interfere with impugned order and direct that the suit be heard for the interim relief dispensing with the pre-institution mediation requirement.

8. It is also necessary to note that this Court has, *inter alia*, directed the Developer - respondent No.3 not to act any further in so far as Shop No.2, under the redevelopment scheme. Mr. Butala, the learned Counsel for respondent No.3 – Developer, on instructions, makes a statement that respondent No.3 will not act further in pursuance of PAAA executed by respondent No.3 in favour of respondent Nos.1 and 4 in relation to Shop No.2, for the period of four weeks.

9. The statement is accepted.

10. Hence, the following order:

: O R D E R :

- (i) The petition stands allowed.
- (ii) The order passed by the learned Judge, City Civil Court, declining to waive pre-institution mediation stands set aside.
- (iii) The pre-institution mediation requirement is waived.

- (iv) The learned Judge, City Civil Court, is requested to hear the application for interim relief as expeditiously as possible.
- (v) The statement made on behalf of respondent No.3 – Developer that respondent No.3 – Developer will not act in furtherance of PAAA executed in favour of respondent Nos.1 and 4 is accepted and shall continue to operate for the period of four weeks from today.
- (vi) It is hereby made clear that this Court has not entered into the merits of the matter and all contentions of all the parties on facts and in law are kept open for consideration by the trial court, and the trial court shall decide the application for interim relief on its own merits and in accordance with law without being influenced by any of the observations made by this Court.

Petition disposed.

[N. J. JAMADAR, J.]