

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 18665 OF 2024

Shehzaad Adil Nensey And Anr

... Petitioners

Versus

The State of Maharashtra Throu.

The Govt Pleader And Anr

... Respondents

Mr. Dhruva Gandhi *with Mr. Deepak Deshmukh i/b Mr. Darshit Jain, for the Petitioners.*

Dr. Veerendra Tulzapurkar, Senior Advocate *with Ms. Shreya Jha i/b Mr. Kunal Damle, for Respondent No.2.*

Mr. Hamid Mulla, AGP *for Respondent-State.*

CORAM : SANDEEP V. MARNE, J.

DATE : 1 APRIL 2025.

P.C. :

1) The Petition challenges order dated 21 June 2024 passed by the Maintenance Tribunal constituted under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. By the impugned order Petitioners have been directed to vacate possession of Flat Nos. 1001, 1002, 1003 and 1101 in building Shadab.

2) I have heard Mr. Gandhi, the learned counsel appearing for the Petitioners and Dr. Tulzapurkar, the learned senior advocate appearing for Respondent No.2.

3) It is an undisputed position that during pendency of proceedings before the Maintenance Tribunal the Petitioners had

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already lost possession of the flats in question by way of implementation of *ad-interim* order passed by the Maintenance Tribunal. It appears that Petitioner No.1 has instituted Suit No. 145 of 2024 in this Court *inter alia* claiming the share in the estate of his father. In that suit, Interim Application (St) No. 30261 of 2023 was taken out by the first Petitioner for seeking interim reliefs. When the said Interim Application came up for hearing on 7 May 2024 following statement was made on behalf of first Petitioner.

9. At this stage, the learned counsel appearing for the applicant submitted that the applicant (plaintiff) is no longer able to reside in the flat in which he was residing before disputes arose between the parties. It is submitted that the plaintiff is not permitted to participate in the family business and he is not been able to enjoy the profits earned therefrom. In such circumstances, it is submitted that this Court may consider granting defendant Nos.1 and 2 to pay a reasonable amount to the plaintiff, during the pendency of the present application.

4) Based on inability expressed by the first Petitioner to reside in the flats in question as well as the interest shown by him in securing monetary compensation by way of interim arrangement towards his alleged share in the estate of his father, this Court passed following order on 7 May 2024.

12. This Court has considered the material on record. The share of the plaintiff in the estate left behind by the deceased will have to be determined in the suit, but his entitlement to the share in the estate of the deceased cannot be denied. It is also discernible from the material on record that the applicant had to leave the flat in which he was living with his wife along with defendant Nos.1 and 2. It is also found from the material available on record that as on today the plaintiff has no access to the family business.

13. In these circumstances, as an interim arrangement, this Court is of the opinion that defendant Nos.1 and 2 should pay a reasonable amount per month to the plaintiff, during the pendency of the present application.

14. Accordingly, defendant Nos.1 and 2 are directed to pay amount of Rs.3 lakhs per month to the plaintiff on or before 5th day of each month, during the pendency of the present application.

5) After the first Petitioner agreed to receive monetary compensation *inter alia* for loss of possession of flats in question, the Maintenance Tribunal passed the impugned order dated 24 June 2024 directing the eviction of both the Petitioners from the very same flats.

6) The first Petitioner is thus enjoying monetary compensation of Rs.3,00,000/- per month, which also includes hefty compensation towards loss of possession of the flats due to eviction order by the Maintenance Tribunal. Petitioner's suit seeking share in the said flats is already pending. The order passed by the Maintenance Tribunal in exercise of summary jurisdiction would obviously be subject to the order that would be passed by this Court in Suit No. 145 of 2024. In the event, the first Petitioner/Plaintiff in the suit decides to file an application seeking re-entry into the flats in question by giving up the claim towards monetary compensation, such application can be decided by this Court on its own merits. In my view, therefore since the first Petitioner is already enjoying monetary compensation for his eviction from the flats in question, this Court is not inclined to exercise jurisdiction under Article 227 of the Constitution of India for making an interference in the impugned order dated 21 June 2024 passed by the Maintenance Tribunal. Leaving open all issues relating to the title of flats in question in Suit No. 145 of 2024, the Petition is **rejected**.

[SANDEEP V. MARNE, J.]