

ANANT
KRISHNA
NAIK

Digitally
signed by
ANANT
KRISHNA
NAIK
Date:
2025.11.21
19:48:48
+0530

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

**INTERIM APPLICATION NO. 6753 OF 2024
WITH
FIRST APPEAL NO. 1542 OF 2024**

Beena Ramavatar Maheshwari	...Applicant
IN THE MATTER BETWEEN	
Vijay S. Dhiwar (Since deceased) through LR.	...Appellants
Vs.	
Beena Ramavatar Maheshwari & Ors.	...Respondents

Mr Pankaj Dwivedi for the Applicant in IA and for Respondent in FA
Adv. Mehek Bookwala a/w. Adv. Paresh Thakar, Adv. Yash Tated for the
Respondents in IA and Original Appellants in FA

CORAM : M. M. SATHAYE, J.

DATED : 21st NOVEMBER 2025

P.C.:

1. Heard learned Counsel for the parties.
2. This Application is filed by original Plaintiff seeking directions to the Developer involved, to handover the possession of the subject flat, which is constructed pursuant to re-development of the earlier suit premises.
3. Learned Counsel for the Applicant, relying on the findings given by the learned Trial Judge in the impugned Judgment, submits that the present Appellants are claiming through the Defendant No. 3, who was merely a licensee inducted by a person (Defendant No. 1) who had no authority to do so. He submits that under clause (C) of the impugned Judgment and Decree, Defendant No. 3 is directed to hand over vacant and peaceful possession of

the suit premises to Plaintiff/Applicant.

4. Learned Counsel for the contesting Respondents (Appellants in the Appeal) contended that admittedly the suit premises were handed over by Defendant No. 3 to the Developer and since Defendant No. 3 is a person dis-housed in re-development process, he must be put back in possession and such possession can be subject to final outcome of the Appeal. She submits that pending the Appeal, the Plaintiff cannot seek execution of the decree by filing application like this. She relied upon the judgment of the Division Bench of this Court in case of **Ritesh Haldar vs. Elite Housing LLP and Ors.**, (Commercial Arbitration Appeal (L) No. 14486 of 2025 dated 24/06/2025) in support of her submissions.

5. During the course of the argument, a letter was pointed out to the Court dated 17/02/2022 contending that the Plaintiff - Beena had agreed to take possession of the suit flat from Defendant No. 3 and in turn handover the possession of the new flat to Defendant No. 3. Learned Counsel for the Plaintiff/Applicant has disputed this position saying that such consent was not given by the Plaintiff - Beena.

6. In such circumstances, stand over to 10/12/2025 for further consideration. The Appellant (Defendant No. 3) to take necessary instructions about the consent/agreement of the Plaintiff stated in the said letter.

(M. M. SATHAYE, J.)