

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

**APPEAL FROM ORDER NO. 278 OF 2024
WITH
INTERIM APPLICATION NO. 7314 OF 2024**

Sachchidaanand Laldhar Sharma ...Appellant
Versus
Municipal Corporation Of Greater Mumbai P/N
Ward And Others ...Respondents

Appearance on 19/12/2024:

Mr. Dhananjay Singh a/w Mr. Shailesh Rai for the Appellant.
Ms. Seena Rawade for Respondent No.1-BMC.
Mr. Harshad Sathe for Respondent No.2-Developer.
Ms. Manvi Sharma for Respondent No.3-Society.
Mr. Manoj Agre a/w Mr. Girish Kedia for Respondent Nos. 4 and 5.

Appearance on 13/01/2024:

Mr. Amit Upadhyay Singh i/b. Mr. Shailesh Rai for the Appellant.
Mr. Harshad Sathe for Respondent No.2-Developer.
Ms. Manvi Sharma for Respondent No.3-Society.
Mr. Manoj Agre for Respondent Nos. 4 and 5.

CORAM : M. M. SATHAYE, J.

DATED : 13th JANUARY 2025

P.C.:

1. Learned Counsel for the parties were heard on 11/12/2024 and 19/12/2024 and the Appeal is placed today for passing order.
2. The Appellant is the Plaintiff and the Respondents are Defendants. The Appeal is filed challenging the order dated 11/12/2023 passed by City Civil Court, Borivali Division, Dindoshi, Goregaon, Mumbai in Notice of

Motion No. 815 of 2023 in L.C. Suit No. 272 of 2023. By the said impugned order, a motion taken out by the Appellant for restraining the Respondent No. 1-Municipal Corporation from approving and sanctioning the development plan of the proposed building on the suit property without entering tripartite agreement of Permanent Alternate Accommodation ('PAAA' for short) in favour of the Appellant and further restraining the Respondent No. 2-Developer and the Respondent No. 3-Society from carrying out further construction and creating 3rd party interest, is rejected.

3. The suit is filed seeking declaration that the Respondent Nos. 2 & 3 are not entitled to proceed with re-development of property at Shri Niwas Malad Co-Op. Housing Society Ltd situated at S.V. Road, Tal. Borivali, Malad, West, Mumbai – 400064 until the Respondent Nos. 2 and 3 enter into tripartite agreement with the Appellant for PAAA in lieu of the suit property - Shop no. G-3, and make payment of compensation, transit rent, shifting, brokerage, hardship compensation and corpus fund to the Appellant. Prayer is also made for mandatory directions to the Respondent Nos. 2 and 3 to enter into such PAAA Agreement with the Appellant and pay him transit rent and other heads of compensation.

4. Learned Counsel Mr. Singh, for the Appellant, submitted that his client was admittedly in possession of the suit property, who has handed over the same to the Respondent Nos. 2 and 3 for re-development purpose. He submitted that admittedly the Respondent Nos. 4 & 5 have filed Suit No. 2905 of 2007, initially before this Court for declaration of joint family property and partition thereof, which was subsequently transferred to City Civil Court, Gr. Mumbai and is now re-numbered as L.C. Suit No. 5894 of 2007, which is pending for final hearing. He submits that the Shop no. G-3 is

subject matter property of that suit for partition. The society building is under re-development and there is development agreement between the Respondent No. 2-Developer and the Respondent No. 3-Society. He submitted that the Appellant is not against re-development; however, since the Appellant was in possession of suit shop G-3, who has handed over the same for the purpose of re-development, the PAAA must be executed with the Appellant and he must be paid transit rent, shifting charges, brokerage etc. subject to the outcome of the partition suit. He has relied upon the Guideline no. 1.15 issued by the Respondent Municipal Corporation about inclusion of necessary condition of PAAA, in support of the prayers made in the suit. He has relied upon the various judgments / orders of this Court, which are listed in paragraph no. 5 of the impugned order.

5. Learned Counsel Mr. Agre for the Respondent Nos. 4 & 5, who are contesting Respondents and who are Plaintiffs in the said partition suit has vehemently opposed the present Appeal. He submitted that the prayers made in the suit are for simplicitor injunction and such prayers are not permissible in view of Section 41(h) of the Specific Relief Act, 1963, in as much as, it provides that the injunction cannot be granted when equally efficacious relief can certainly be obtained by any other usual mode of proceedings, except in case of breach of trust. He submitted that in the present case, there is no question of breach of trust. He submitted that the dispute about entitlement to the suit shop no. G-3 is pending in the said partition suit before the City Civil Court, Mumbai, in which the injunction granted by this Court earlier, is in force, under which the Defendants therein (including the present Appellant) are restrained from in any manner alienating, encumbering and/or selling or disposing of or creating 3rd party rights or interest or parting with possession of the suit property. He

submitted that when such injunction is in force between the parties, the Appellant should have applied in the said partition suit, seeking necessary direction or permission to enter into PAAA Agreement, subject to the outcome of the partition suit. He submitted that the present Appellant has not signed the development agreement.

6. Learned Counsel Mr. Sathe, for the Respondent No. 2 – Developer submitted that the suit is not maintainable. He submitted that construction is already proceeding and the suit property is already under re-development. He submitted that the Appellant can approach the Trial Court where the partition suit is pending and seek necessary permission. He submitted that the developer will execute PAAA and pay the transit rent and other heads of compensation and corpus fund in favour of whichever party, the Court may direct. He submitted that the developer is not interested in dispute about the entitlement pending between the Appellant and the Respondent Nos. 4 & 5 or their family members; however the said dispute should not hamper the development for which the Developer is spending money.

7. I have considered the rival submissions and perused the record. The Court is informed that there was no interim protection in favour of the Appellant during the pendency of the motion.

8. It is true that in case of re-development of old society building, it is now settled position of law under the various judgments of this Court including the latest order of the Division Bench of this Court, in case of **Vipul Fatehchand Shah vs Nav Samir Cooperative Housing Society & Ors**¹ that in such situation, the transit rent is to be paid to the person who is being dis-housed from the premises in question and such person has to be put back

1. Comm. Appeal (L) No. 25162 of 2023 in Comm. Arb. Pet. (L) No. 20814 of 2023 order dt. 06.10.2023.

into possession on completion of re-development. In such situation, the *inter-se* dispute *qua* title and/or entitlement to the premises in question, which is the subject to re-development, are not factors which are relevant to be considered for the purposes of possession being handed over or payment of transit rent etc.

9. The real question here is - whether such direction was indeed sought by the Appellant ? Perusal of the prayers of the motion would indicate that an injunction was sought against the Respondent-Municipal Corporation, restraining them from approving and sanctioning the development plan, until and unless the Developer and the Society enter into PAAA with the Appellant in lieu of the suit shop and make the payment of transit rent etc. in favour of the Appellant. Further prayer is made against the Developer and the Society restraining them from carrying out further construction and / or development or creating 3rd party interest in respect of suit shop.

10. It is not in dispute that the suit shop was handed over for re-development to the Respondent-Developer by the Appellant. The learned Trial Judge, while passing the impugned order has found that the Appellant has equally efficacious relief, which can be certainly obtained from the City Civil Court, Mumbai where the said partition suit is pending and therefore any restraint upon the Municipal Corporation or Respondents – Developer and the Society from carrying out development/re-development activities cannot be granted. The Trial Court has found that if any such restraint order is passed, it will jeopardize / affect the rights of other members of the society who are not before the Court, and therefore the balance of convenience is found against the Appellant.

11. There is also an aspect of existing injunction granted by this Court

under order dated 25/10/2007 passed in Notice of Motion No. 3915 of 2007 in partition suit no. 2905 of 2007. The present Respondent Nos. 4 & 5 are Plaintiffs and present Appellant is Defendant No. 2C in the said partition suit. Therefore, as on today, the Appellant is bound by the said injunction order. The prayer for execution of PAAA in favour of the Appellant can be certainly made by taking out appropriate motion in the said partition suit in which the injunction is in force.

12. Considering the nature of the prayers made in the present suit, the objection raised u/s. 41(h) of the Specific Relief Act and the existence of injunction between the parties in pending partition suit, in my view, it would not be appropriate to mould the relief directly in this Appeal from Order and direct the Respondent – Developer to execute PAAA and pay transit rent in favour of the Appellant.

13. In the peculiar facts of this case, the discretion already exercised by the Trial Court while refusing the interim injunction, need not be interfered or substituted by the discretion of this Court. I am fortified in my view by the settled position of law as laid down by the Hon'ble Supreme Court in case of **Wander Ltd. & Anr. vs. Antox India Pvt. Ltd.**², which position is recently reiterated by Hon'ble Supreme Court in **Ramakant Ambalal Choksi vs Harish Ambalal Choksi**³. However, the Appellant is certainly entitled to seek necessary prayer in the said partition suit.

14. Hence, the Appeal from Order and pending Interim Application **are disposed of** by passing the following order:

(a) The impugned order is not interfered with.

2. 1990 (Supp) SCC 727

3. 2024 SCC OnLine SC 3538

(b) The Appellant is at liberty to file appropriate motion in L.C. Suit no. 5894 of 2007, pending in the City Civil Court, Greater Mumbai, seeking permission/direction to enter into the PAAA agreement and receipt of transit rent and other heads of compensation during re-development process of present suit property Shop No. G-3, from the Respondent No. 2-Developer and Respondent No. 3 – Society.

(c) The Appellant is also at liberty to apply in the said suit for making the present Respondent No. 2 – Developer and the Respondent No. 3-Society as parties, for the limited purpose of seeking such permission/direction.

(d) If such motion is filed by the Appellant within a period of 4 weeks from today, the learned Trial Judge hearing the L.C. Suit no. 5894 of 2007, shall decide the said Application in accordance with law without being influenced by the observations in the impugned order dated 11/12/2023 and considering the position of law, as indicated above in the present order.

(e) No costs.

15. All concerned to act on duly authenticated or digitally signed copy of this order.

(M. M. SATHAYE, J.)