

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

**INTERIM APPLICATION NO. 16047 OF 2024
IN
FIRST APPEAL NO. 210 OF 2019**

Vishal Shantilal Nagaria

...Applicant

In the matter between

Uttam T. Jain

...Appellant

Versus

Vishal Shantilal Nagaria

...Respondent

Mr. Ranjeev Carvalho a/w. Mr. Tejas Agarwal, Adv. Rishabh Murali, Adv. Tejaswi Pania i/b. M/s. IC Legal for Respondent in IA and for the Appellant in FA.

Adv. Manish N. Bijutkar for the Applicant in IA and for Respondent in FA.

Mr. Uttam Jain, Original Appellant present in person.

CORAM : M. M. SATHAYE, J.

DATED : 2nd SEPTEMBER 2025

P.C.:

1. Heard learned Counsel for the parties.
2. This is an Application by original Plaintiff, seeking directions to the Defendant to deposit rent and security deposit as per Schedule I annexed to the Application.
3. Few facts necessary for disposal of this Application are as under. Applicant filed suit for specific performance in respect of an agreement for sale dated 12/09/2013. This is a registered document in respect of subject flat, which is flat D-602, Jyoti Arch Building, Amcon Jyoti Co-operative Housing Society, S. V. Road, Kandivali (W), Mumbai – 400067. Total consideration agreed as per registered agreement is Rs.31,00,000/-. The

case of the Applicant/Plaintiff in the Trial Court was that the Defendant agreed to sell and sold the Suit flat for total consideration of Rs.31,00,000/- under the said agreement. It was contended that despite payment of the entire consideration and execution of the registered document, possession of the suit flat was not handed over and therefore suit notice was issued and suit was required to be filed. The Defendant has filed written statement contending *inter alia* that the nature of the transaction was not that of sale but it was merely a security agreement for loan taken by one Mr. Umakant Gupta from the Plaintiff. Issues were framed and the Trial Court held that the agreement as well as payment of consideration is proved. Accordingly suit is decreed directing the Defendant to hand-over vacant possession of the suit flat to Applicant/Plaintiff.

4. Perusal of the impugned judgment indicates that Plaintiff in his cross-examination has admitted that a report was lodged with the police authority in respect of suit flat where the Plaintiff referred to the amount of Rs. 70,00,000/-. It is the case of the Plaintiff that the said amount is not told by him to the police. Based on this admission, it is argued by the Defendant (Appellant in Appeal) that the amount involved in the transaction was much more than Rs.31,00,000/- and the transaction was not really that of sale.

5. Learned Counsel for the Applicant has pressed this Application on the ground that despite a decree of specific performance and possession, the Applicant is required to reside in the flat taken on leave and license, as the impugned decree in his favour, is stayed by this Court. Last leave and license agreement dated 28/03/2022 is produced on record, and it is submitted that for the 3rd year, an amount of Rs.65,000/- per month is required to be paid by the Applicant. He submitted that since the Appeal is admitted and the impugned judgment and decree is stayed, the Defendant

must be directed to deposit the rent and security deposit from October 2013 till date.

6. Learned Counsel for the original Appellant / Defendant has opposed this Application relying on the affidavit-in-reply dated 04/08/2025. It is submitted that it was never the case of the Applicant that he had incurred any expenses towards alternate accommodation due to non-performance of the said agreement and no such prayer was ever made. It is further submitted that present Applicant has admitted in the cross-examination that he is residing in the flat which is much larger than the suit flat. Relevant portion of cross-examination is reproduced in the reply.

7. I have considered the submissions and perused the record.

8. The last leave and license agreement relied upon by the Applicant indicates that it is executed in favour of wife and father of the Applicant. The address of wife and father of the Applicant shown in the column indicating details of 'licensee' shows that at the relevant time, flat no. 701/A in the same building Vasant Aishwarya Co-operative Housing Society was shown as their address. The flat regarding which the leave and licence is executed is a flat on the 4th floor of the same building being flat no. A/402.

9. Considering the said description of addresses coupled with the admission of the Applicant regarding occupation of a flat larger than the suit flat, and further considering that nothing is pointed out to the Court regarding such claim being made in the past, the claim made by the Applicant for deposit of rent since October 2013 cannot be granted first time in this Application.

10. However, the Court cannot lose sight of the fact that the suit filed by

the Applicant is decreed as on today, in which there are findings about execution of registered document and payment of total consideration. Since this court has granted stay to the execution of the impugned decree, the Applicant is not in a position to obtain possession of the suit flat for occupation as he desires.

11. It is not disputed that in earlier IA/3973/2021 the Applicant had prayed for appointment of court receiver, for refund of Rs.31,00,000/- and also for expeditious hearing. Under order dated 08/03/2024, the Applicant withdrew the said Application with liberty to file fresh Application and the present Application is filed. Also when interim stay was granted by this Court on 10.06.2019 in CAF/695/2019, Appellant is already restrained from creating third party interest in the suit flat.

12. In the aforesaid facts and circumstances, for balancing equities between the parties, the Court made a query with the Appellant / Defendant as to whether he is willing to pay any amount without prejudice to his rights and contentions, to the Applicant because the suit flat is occupied by him.

13. Learned counsel for the Appellant /Defendant, on instructions, stated that considering the area of the suit flat and information gathered from the local brokers, according to him, the suit flat is available today for rent of about Rs.25,000/- per month, which amount the Appellant is willing to pay to the Applicant/Plaintiff without prejudice to his rights and contentions. Learned counsel for the Applicant/Plaintiff however submits that the said amount is not sufficient considering his last rent/licence fee of Rs. 65,000/- per month and some respectable amount, obviously more than what is being offered, should be granted.

14. At this stage, it is material to note that the involvement of the said

third person Mr. Umakant Gupta and the higher amount of Rs.70,00,000/- stated in the police report needs to be considered at the time of final hearing of the Appeal, to decide about the real nature of transaction as contested between the parties. At this interim stage, suffice to say that further hearing into rival claims is necessary and neither the claim of the Plaintiff nor that of the Defendant can be accepted at its face value.

15. In the aforesaid facts and circumstances, in my considered view, following order will balance the equities. Hence following order :

(a) The Appellant/original Defendant is directed to pay the Applicant/original Plaintiff an amount of Rs.30,000/- per month starting from this month. The amount is to be paid on or before 10th of each month during the pendency of the Appeal.

(b) It is clarified that the amount so payable by the Defendant shall be without prejudice to his rights and contentions in the Appeal. It is further clarified that the amount so received by the original Plaintiff shall be subject to final outcome of the Appeal and the Applicant/Plaintiff will be bound to bring back the money with interest, if so directed by the Court.

(c) In case of two consecutive defaults in making the payment, the Applicant will be at liberty to apply to the Court for vacating the interim stay in the Appeal.

16. The Application is disposed of in above terms.

(M. M. SATHAYE, J.)