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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 6805 OF 2025
IN
APPEAL FROM ORDER NO. 855 OF 2024**

Pallavi Vasant Telang ... Applicant/Appellant

VS.

Surekha Mohan Mudliar and Ors ... Respondents

Ms. Indrayani Koparkar for Appellant.

Mr. Malhar Bageshwar i/b. Mr. Siddharth Wakode for Respondent No.1.

Mr. Vasim A. Shaikh a/w. Mr. Sandhya Jain i/b. Mr. Pravin Mehta and Mithi and Co. for Respondent No.3.

CORAM : GAURI GODSE, J.

DATED : 8th JULY 2025

ORDER:

INTERIM APPLICATION NO. 6805 OF 2025.

1. Heard learned counsels for the parties. This application is filed in the admitted Appeal from Order. By this application, the plaintiff seeks directions to the respondent-developer to hand over possession of the newly constructed flat to the applicant/plaintiff. The applicant also prays for directing respondent-developer to release the rent amount for the temporary accommodation from 1st March 2023 till handing over of possession. The prayer for

handing over possession is made by way of amendment as the redeveloped building is ready for occupation after the suit is filed.

2. The flat in dispute was originally owned by the plaintiff's father. The plaintiff is adopted daughter of one Mr. Vasant Telang and Mrs. Shashikala Telang. Respondent No.1 is the sister of Shashikala. The plaintiff's father, i.e. Vasant had executed a Will dated 9th July 2012 and bequeathed the flat to his wife Shashikala, during her lifetime and after her death to the plaintiff. Vasant expired on 20th December 2012. Shashikala expired on 3rd October 2013. Respondent No.1 claims right in respect of the suit flat on the ground that Shashikala had bequeathed the suit flat in her name. She relies upon the letter of administration granted in her name on 11th July 2014. Respondent no.1, claims that pursuant to the letter of administration, the transfer deed is also executed and she is admitted as a member of the society.

3. The plaintiff contends that pursuant to the Will, Shashikala had been granted rights only during her lifetime and as per the Will, after the death of Shashikala, the flat is bequeathed to plaintiff. Hence, the plaintiff has filed an application in this court to revoke the letters of administration granted in favour of respondent no.1. The plaintiff has filed a separate probate petition

for grant of probate of Will dated 9th July 2012. The revocation petition bearing Miscellaneous Petition (L) No. 12939 of 2022 is pending in this court. The probate petition is lodged by the plaintiff and she relies upon e-filing number as stated in paragraph no. 6(I) of this application.

4. The plaintiff further claims to be in possession of the flat in the original building that is redeveloped. The plaintiff relies upon the receipt by which the plaintiff was paid transit rent for the period from 1st March 2022 to 28th February 2023. The plaintiff also relies upon the receipt for payment towards shifting charges. The receipts are part of the documents relied upon by the plaintiff in the suit. The plaintiff therefore claims that since, she was always in possession and at the time of vacating the building possession of the flat was handed over to the society by the plaintiff, she would be entitled to get the possession of the flat in the redeveloped building. She therefore claims that the remaining rent towards transit accommodation till handing over possession should also be paid to the plaintiff.

5. To support her submissions, learned counsel for the plaintiffs relies upon the decision of this court in Commercial Appeal(L) No. 25162 of 2023. She submits that in view of the well

settled legal principles, this court held that the transit rent is to be paid to the person, who is being dishoused from the premises in question and the person dishoused for the purpose of redevelopment shall be put back into possession on completion of the redevelopment. Learned counsel for the plaintiff submits that during the pendency of the suit, the construction of the building is complete and it is ready for occupation. She thus, submits that due to the dispute between the plaintiff and respondent no.1, PAAA agreement is not yet executed. She however, submits that in view of the aforesaid facts, the plaintiff would be entitled to get possession of the flat in redeveloped building.

6. Learned counsel appearing for the respondent-developer has no objection if possession is handed over to the plaintiff. The developer also has no objection if the PAAA agreement is executed after the dispute between the parties on title is finally decided.

7. Learned counsel for the developer submits that so far as arrears towards transit rent is concerned, the amount shall be paid to the plaintiff upto the date of the occupation certificate. He on instructions submits that the amount shall be paid within two weeks by transferring the amount directly to the plaintiff's bank

account. Statement made on behalf of the developer is accepted as an assurance to this court. Learned counsel for the developer submits that the corpus fund towards the suit flat shall be deposited in the trial court.

8. Learned counsel for respondent no.1 submits that he has filed affidavit-in-reply and written statement in the suit denying that the plaintiff was in possession or she handed over possession. He submits that respondent no.1 claims right in the suit flat based on the letters of administration and the deed of transfer as well as the order admitting respondent no.1 as a member of the society. He further submits that respondent no.1 has also filed a civil suit for declaration on her title. He submits that the rival contentions of the parties on title should be kept open to be decided in the appropriate proceedings, in the event this application is allowed.

9. Considering the aforesaid, the plaintiff would be entitled to get the possession of the flat of the redeveloped building and would also be entitled to receive the arrears towards transit rent upto the date of the occupation certificate. Considering the Will executed by the original owner Vasant which admittedly provides for the plaintiff's right after the lifetime of Shashikala, *prima facie*,

the plaintiff would be entitled to the suit flat. The application for revocation of letters of administration in favour of respondent no.1 is also pending. Probate application filed by the plaintiff is also pending. The suit filed by respondent no.1 claiming title is also still pending at the initial stage. Hence, the possession of the flat can be handed over to the plaintiff, subject to the outcome of the pending proceedings between the plaintiff and respondent no.1. However, since the possession was handed over by the plaintiff at the time of redevelopment she would be entitled to arrears towards the transit rent.

10. It is clarified that the execution of the PAA agreement would depend on the final outcome of the pending proceedings and the final decision of the title of the suit. Since, the developer is not a party to the proceedings between the applicant and respondent no.1, the final outcome of the proceedings shall be intimated to the developer by the plaintiff. On receiving such intimation, the developer would be at liberty to execute PAAA agreement.

11. For the aforesaid reasons, this application is allowed by passing the following order:

- I) Respondent No.3 developer shall hand over the flat in the redeveloped building to the plaintiff/applicant within

four weeks from today.

II) The respondent no.3 developer shall transfer the amount towards arrears of transit rent upto the date of occupation certificate by transferring the amount to the bank account of the plaintiff within four weeks from today.

III) The applicant shall pay all the society dues till further orders.

IV) It is clarified that the aforesaid arrangement regarding handing over possession shall be subject to final outcome of the pending proceedings between the applicant/plaintiff and respondent no.1 and further orders passed by this court in this appeal.

V) It is clarified that the possession handed over to the applicant/plaintiff shall continue with the applicant/plaintiff till the outcome of the pending proceedings between the parties and any further orders passed by this court in this appeal.

12. Interim Application is allowed in the aforesaid terms.

(GAURI GODSE, J.)