

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 8289 OF 2025
IN
FIRST APPEAL NO. 1022 OF 2025

Rajendra W. Waghmare

...Applicant

Versus

Ramshankar B. Gupta

...Respondent

Ms. H. Y. Shah i/b Mr. Yatin Shah for the Applicant.

Mr. Ankit Lohiya a/w Mr. Amardev Uniyal for Respondent.

CORAM : M.M. SATHAYE, J.
DATE : 16th DECEMBER, 2025

P.C. :

1. Heard learned Counsel for the parties.
2. This is an application by the Appellant/Defendant seeking stay to impugned Judgment and Decree dated 18.02.2025.
3. The Respondent filed S.C. Suit No. 721/2013 against the Appellant for declaration of ownership and recovery of possession and mesne profit in respect of flat No. 85 admeasuring 785 sq. ft. at building No.5, known as "Periyar" in Chempazhanti Co-operative Housing Society Ltd, P.L. Lokhande Marg, Govandi, Mumbai - 400043 ('suit flat' for short).
4. Case of the Respondent in short is as under. That he is owner of the suit flat, who was in need of money and desired to sell the same. After negotiations with the Appellant, Respondent agreed to sell the suit flat for consideration of Rs.35,00,000/-. Accordingly, an agreement for

sale was executed on 25.11.2009. Rs. 10,00,000/- were paid towards part consideration and balance consideration was agreed to be paid on or before 09.12.2009. Though the suit flat was agreed to be handed over at the time of execution of sale deed, the Appellant-Defendant on pretext of inspecting the suit flat, obtained the keys from Respondent-Plaintiff in good faith, however never returned. As such the Appellant is in possession. The Appellant kept promising the balance payment, however, failed to pay. Instead of making balance payment, the Appellant sent Advocate's notice falsely contending that he has paid balance amount of Rs.25,00,000/- in cash. That the amount of Rs.10,00,000/- was returned.

5. The Appellant filed written statement contending *inter alia* that he has paid entire consideration. Case of return of Rs. 10 Lakh has been denied.

6. The Trial Court after hearing both the sides and on appreciation of evidence has decreed the suit and directed the Appellant to handover the possession of suit flat. An inquiry for mesne profit is initiated and amount of Rs. 6,75,500/- paid by the Appellant to the bank, is directed to be adjusted towards mesne profit.

7. Ms. Shah, learned counsel for the Appellant submitted that as the full amount of consideration is paid by the Appellant, the decree of possession must be stayed. She submitted that she has excellent case on merit and is most likely to succeed in the appeal.

8. On the other hand, Mr. Lohiya, learned Counsel for the Respondent opposes the grant of interim stay. He submitted that

Respondent has been held entitled to vacant and peaceful possession of suit flat. He submitted that the Plaintiff's continued possession, after the impugned Judgment and Decree, amounts to illegal possession and therefore, if the decree of possession is going to be postponed by interim stay, then the Appellant must be directed to pay interim compensation at market rate based on law laid down under **Atmaram Properties Pvt. Ltd. v/s. Federal Motors Pvt. Ltd. [(2005) 1 SCC 705]**.

9. Relying on the affidavit-in-reply, he submitted that instances of leave and licence agreements recently executed in the same building (where suit flat is situated) are placed on record and the society's bill showing pending maintenance/outgoing for suit flat is also produced to contend that the Appellant must be directed to immediately clear the same.

10. Relying on the affidavit-in-rejoinder dated 08.12.2025, it is submitted by Ms. Shah that the Appellant cannot be equated with an illegal occupier as this is the case where the Appellant was put in possession on the basis of agreement for sale for which entire consideration is paid. She submitted that this is not a case where the Appellant has been paying meagre rent / licence fee and the Appellant cannot be equated with tenant / licensee. She has however submitted on instruction that the Appellant is ready and willing to pay the pending maintenance / outgoing of the suit flat.

11. I have considered the rival submissions and perused the impugned judgment and decree and other record produced. It is necessary to note at the outset that under the impugned Judgment and Decree, the Trial Court has found that Respondent is sole owner of the

suit flat, who proved that he has returned the advance amount of Rs.10,00,000/- and he is entitled to vacant and peaceful possession. The Trial Court also held that the Respondent is entitled to mesne profits. The case of the Appellant that he has paid entire consideration of Rs.35,00,000/- has been held as 'not proved'.

12. The factual dispute about payment of Rs.25,00,000/- in cash cannot be adjudicated at the interim stage and the same shall be decided at the time of final hearing. This Court has to keep in mind that the Appellant is directed to handover possession of the suit flat to the Respondent. In case the direction to handover possession is stayed, the Respondent shall be deprived of the possession of suit flat, for which the Respondent has to be compensated appropriately. At the same time, the Court cannot lose sight of the fact that the Appellant is not a tenant or licensee paying meagre compensation for long time and therefore, he cannot be compelled to pay market rent for continuation in possession. The present dispute being a civil dispute about rival ownership claims, the Appellant stands on a different pedestal as compared to long standing occupiers with meagre payments to owner/landlord of old contractual rent or licence fees.

13. The Respondent has produced material in the form of leave and license document of January, 2025 and April 2025 of the exact area of 785 sq. ft. as that of the suit flat. Therefore, rates reflected from the said documents can be considered as guiding figures. Considering the recent leave and license instances of January 2025 and April 2025, showing monthly compensation of Rs. 40,000/- and 48,000/-, average monthly compensation for suit flat can be taken as Rs. 44,000/- per month. However, considering that the Appellant-Defendant cannot be

directly equated with a tenant or licensee, appropriate reduction is necessary for balancing the equity between the parties.

14. In the aforesaid facts and circumstances, considering the nature of rival claims, according to me, 40% reduction should be appropriate. Therefore, in my considered opinion, Rs.26,400/- per month (Rs. 44,000/- minus Rs. 17,600/-) should be appropriate monthly compensation.

15. The Appellant shall also be required to pay the pending society outgoings (Rs. 4,23,528/- as on 01.12.2025) and continue to pay the same regular outgoings, being occupier of the suit flat.

16. Therefore, the **Interim Application is disposed of** by directing that during pendency of the appeal, Clause (1) of the impugned Judgment and Decree dated 18.02.2025 passed in S.C. Suit No. 721 of 2013 by the City Civil Court, Mumbai (about possession) shall remain stayed subject to following conditions :

(A) That the Appellant pays Rs. 4,23,528/- of maintenance arrears to the Society within a period of 4 weeks from today and thereafter continues to pay to the Society's monthly maintenance amount without fail.

(B) The amounts paid to the Society shall be without prejudice to Appellants' rights and contentions and shall be subject to final out come of present first appeal.

(C) That the Appellant deposits in this Court, Rs.26,400/- per

month starting from 1st December, 2025.

(D) First deposit of Rs.26,400/- for the month of December 2025 shall be deposited in this Court on or before 30.12.2025. Office to accept the payment even if made during x-mas vacations.

(E) Further deposit of Rs. 26,400/- per month shall be made on or before 10th of each consecutive month.

(F) In case of two consecutive defaults in monthly deposit or payment of Society dues, the interim stay shall stand vacated.

17. Amounts deposited in this Court shall be invested as per prevalent practice.

18. It is clarified that the amount deposited in this Court shall be considered/adjusted at the time of final hearing in mesne profits application. The amount of Rs. 26,400/- per month arrived at by this Court, shall not preclude the Court hearing mesne-profits application, from arriving at independent conclusion, in accordance with law.

19. Liberty to move, in case mesne-profits application is decided, for appropriate modification, if required.

(M.M. SATHAYE, J.)