rrpillai

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 392 OF 2025
WITH
INTERIM APPLICATION NO. 9754 OF 2025

Smt. Aditi Sanjay Jaiswal … Appellant/Applicant

Vs.

Manav Utthan Seva Samiti and Ors … Respondents

Mr. Subhash Jha a/w. Mr. Siddharth Jha, Mr. Sumeet Upadhya and Mr. Ashish Saxena i/b. Law Global for the Appellant/Applicant.

Mr. Vishal Kanade i/b. Mr. Rajesh Singh, Mr. Iftekhar Sayed, Mr. Rahul Singh and Mr. Hitesh Jain for the Respondents.

CORAM : GAURI GODSE, J.

DATE : 20th AUGUST 2025

ORDER :

1. This appeal is preferred by the original plaintiff to challenge the order dismissing the interim application filed by the appellant. The appellant is the original plaintiff. The appellant has filed a suit for specific performance of an agreement in respect of the suit Flat No. A/9. Apart from the prayer for the specific performance of an oral agreement, the appellant also prayed for a declaration. The main prayer clauses in the suit read as under : -

> *"(a) that the Defendants be ordered and decreed to specifically enter into an Agreement for Sale/Sale Deed/Conveyance in respect of the suit flat, being Flat No. A/9, Acropolis, Sagar Sangeet Co-operative Housing Society Ltd., 58 Shahid Bhagat Singh Road, Colaba, Mumbai-400 005;*
>
> *(b) that this Hon'ble Court may be pleased to hold and declare that the proceedings initiated by the Defendants as against the Plaintiff and others before the Competent Authority under Rent Control Act, Konkan Division at Mumbai and the order and judgment dated 17.3.2021, passed by the Competent Authority under Rent Control Act, Konkan Division, Mumbai in Eviction Application No. 160 of 2019 filed by the Defendant No. 1 is illegal, arbitrary, bad in law and since eviction proceeding is based on complete suppression and distortion of material facts, the order dated 17.3.2021, being Exhibit- 'K' annexed herewith, is a nullity and therefore is unenforceable in law as against the Plaintiff;*
>
> *(c) that this Hon'ble Court may be pleased to hold and declare that the order dated 14.12.2021, being Exhibit- 'P' annexed herewith is equally initiated by fraud, suppression and distortion of material facts and the same be therefore treated to be non est and nullity."*

2. In this suit, the appellant prayed for interim relief to

protect the possession in respect of the suit flat. The appellant also prayed for the appointment of a Court Receiver in respect of the flat. Alternative prayer is also made, restraining the respondents from creating third-party rights in respect of the suit flat. This application for interim relief is rejected by the impugned order.

3. Respondent no. 1 – The Trust is the owner of the suit flat. The appellant is a director of a company who was inducted in the suit flat based on a leave and licence agreement executed on 12th August 2010. The leave and licence agreement was extended on two occasions. The appellant, being the director of the company, claims to be in possession of the suit flat. The appellant claims that there was an oral agreement between the appellant and respondent no. 1 – Trust. Based on the oral agreement, one Pawan Kumar Goyal accepted an amount of Rs. 3 crores from the appellant towards part consideration for the sale of the suit flat. Based on the oral terms and conditions agreed between the parties, the appellant claims that the respondent-trust agreed to sell the flat to the appellant for a total consideration of Rs. 5 crores and Rs. 3 crores was paid

as part consideration. To support the plaintiff's contention regarding oral agreement, she relies upon a notary document dated 7th July 2017. This notary document is executed by Pawan Kumar Goyal at Calcutta. The notary document relied upon by the appellant is produced on record.

4. To support the prayer for specific performance, learned counsel for the appellant submits that the appellant has been residing in the suit flat since 2010 along with her family. Considering the negotiations between the parties, the appellant has paid a substantial amount of Rs. 3 crores, and thus she would be entitled to retain the possession of the suit flat during the pendency of the suit.

5. Learned counsel for the appellant relies upon the relevant pleadings in the plaint in paragraphs 7 and 8 to point out that the parties had arrived at a concluded contract for the sale of the flat in favour of the appellant. With reference to the pleadings in the plaint regarding the concluded contract, learned counsel for the appellant submits that the trial court erred in not considering the relevant pleadings, which support the appellant's contention regarding execution of the oral agreement. He further submits that the trial court

got carried away with the order passed by the competent authority under the Maharashtra Rent Control Act, 1999 (“Rent Act”), which had directed the appellant to hand over possession on the ground that the period of the leave and license agreement had expired. He submits that since the appellant was already in possession of the suit flat and the respondent-trust agreed to sell the same to the appellant, she would be entitled to retain possession of the flat as she was permitted to continue in the flat in lieu of the oral agreement between the parties for the sale of the flat.

6. Learned counsel for the appellant further submits that the trial court was required to take into consideration the substantial prayer made in the suit for a declaration that the order of eviction passed by the competent authority under the Rent Control Act was a nullity and thus the respondent-trust would not be entitled to evict the appellant based on an order which is a nullity. He submits that the order passed by the competent authority is also challenged by the appellant on the ground that it suffers from suppression, fraud and distortion of material facts. He thus submits that in view of the substantial prayers made in the suit for declaration and

specific performance, the appellant cannot be thrown out of the flat during the pendency of the suit. He therefore submits that the appellant is entitled to protect her possession during the pendency of the suit, and hence the impugned order would require interference by this court.

7. Learned counsel for the appellant submits that the suit was initially filed in this court and before it was transferred to the City Civil Court, the appellant was directed to deposit an amount of Rs.1 crore in this court to show her bonafides. He submits that the said amount is already deposited, and the trial court failed to take into consideration that to show her bona fide, the appellant had deposited an amount of Rs . 1 crore.

8. To support his submissions, learned counsel for the appellant relies upon the decision of the Hon’ble Apex Court in the case of ***M. Gurudas and Others vs. Rasaranjan and Others***[1]. He submits that all three basic principles for the grant of an injunction are satisfied in the present case. He submits that the Hon’ble Apex Court held that a prima facie case has to be arrived at by the trial court for considering the prayer for the grant of an injunction. He submits that the trial

1 (2006) 8 SCC 367

court failed to take into consideration the prima facie case, balance of convenience, and irreparable loss in favour of the appellant. The appellant, being in possession of the suit flat since 2010 and having paid a substantial amount towards the part consideration, had made out a prima facie case and a balance of convenience in her favour. He submits that after parting with a substantial amount towards part consideration, if the appellant is evicted from the suit flat, irreparable injury will be caused to the appellant. Hence, he submits that all three principles to grant of injunction are in favour of the appellant.

9. To support his submissions regarding the appellant's entitlement to seek specific performance based on a concluded oral contract and the appellant's right to lead oral evidence in support of the oral agreement, he relies upon the decisions of the Hon'ble Apex Court in the case of ***K. Nanjappa (Dead) By Legal Representatives vs. R. A. Hameed Alis Ameersab (Dead) by Legal Representatives and Another***[2] and ***Achutananda Baidya vs. Prafullya Kumar Gayen and Others***[3]. Learned counsel for the appellant, therefore, submits that in view of the well-settled legal

2 (2016) 1 SCC 762
3 (1997) 5 SCC 76

principles and the peculiar facts of the case, the appellant would be entitled to protect her possession during the pendency of the suit.

10. Learned counsel for the respondent (plaintiff-Trust) supports the impugned order. He submits that the order passed by the competent authority for eviction was challenged by the appellant in this court. He points out the order by which the said writ petition is withdrawn by the appellant. However, at the time of granting leave to withdraw the petition, this court imposed a cost of Rs. 20 lakhs on the appellant. The said order was challenged by the appellant in the Apex Court. The eviction order and the order withdrawing the petition are confirmed, and the order is modified only to the extent of reducing the cost of Rs. 20,00,000/- to Rs. 10,00,000/-.

11. Learned counsel for the respondent further points out that the eviction proceedings before the competent authority were filed sometime in October 2019, after the period of the leave and license agreement had expired. The competent authority passed an eviction order on 17th March 2021. He submits that after the order of eviction was passed, the

present suit was filed on 24th March 2022. He submits that only with an intention to retain possession of the suit flat, the suit for specific performance is filed, raising false and frivolous contentions regarding the concluded contract between the parties. He submits that there is no document produced on record to show that the respondent-trust had ever entered into an oral agreement with the appellant or that any amount was ever paid by the appellant as alleged in the suit. He submits that based on a notary document, which is signed by Pawan Kumar Goyal, allegedly acknowledging receipt of Rs. 3 crores, cannot be considered as a concluded contract between the parties. He points out the relevant pleadings in the reply to the notice of motion, stating that Pawan Kumar Goyal is not concerned with the respondent-trust. He therefore submits that in view of the orders passed by the competent authority, the appellant would not be entitled to retain possession of the suit flat. The challenge to the order of eviction is withdrawn by the appellant.

12. I have perused the papers of the appeal. I have carefully perused the pleadings in the plaint and the supporting documents. The relevant pleadings regarding the

oral contract prima facie do not indicate that there was any concluded contract between the appellant and the respondent-trust.

13. Learned counsel for the respondent has relied upon a specific averment in the affidavit in reply to the interim application. A perusal of the affidavit in reply shows that the respondent has denied execution of any oral agreement with the trust. The respondent-trust has also denied any connection with Pawan Kumar Goyal, who is alleged to have accepted an amount on behalf of the trust. The respondent contends that the Trust is not in any manner concerned with Pawan Kumar Goyal, who is alleged to have accepted an amount on behalf of the trust.

14. The order dated 23rd March 2023 in Writ Petition No. 9587 of 2021, passed by this court, permitting the petitioners to withdraw the writ petition challenging the order of eviction, is placed on record. The appellant was one of the petitioners. This court, in so many words, has observed on the attempts made on behalf of the petitioners to retain possession. This court permitted the petitioners to withdraw the petition. However, by recording reasons, this court imposed a cost of

Rs. 20,00,000/- while permitting the withdrawal of the petition. This order is confirmed by the Hon'ble Apex Court on 12th February 2025. The Apex Court has only reduced the amount of cost to Rs. 10,00,000/-; thus, the order of eviction stands confirmed.

15. Considering the relevant dates regarding filing of eviction proceedings in October 2019, the order of eviction passed by the competent authority on 17th March 2021 and filing of the suit on 24th March 2022 seeking specific performance on an oral agreement allegedly executed in 2017 would be an important factors to be considered for examining the application for interim relief seeking discretionary relief of temporary injunction pending the suit.

16. Considering the peculiar facts of the present case as discussed in the preceding paragraphs, the attempt on the part of the appellant to file suit for specific performance is clear that it is with an intention to defeat execution of the order of eviction, which stands confirmed up to the Apex Court. The contention regarding payment of a substantial amount of Rs. 3 crores in cash is based on a notary document signed by one Pawan Kumar Goyal on 7th July

2017 at Calcutta. The notary document and the notarial certificate are issued by the notary from Calcutta. The connection of Pawan Kumar Goyal with the respondent-trust and the authority of Pawan Kumar Goyal to accept the substantial amount towards any agreement with the respondent-trust is not clear from the plaint. It is also not clear on what basis the amount allegedly accepted by Pawan Kumar Goyal would be binding upon the respondent-trust.

17. Thus, considering these facts and the supporting documents relied upon by the appellant, the trial court has rightly refused to grant any interim injunction. The trial court has referred to the relevant pleadings in the plaint regarding the alleged oral agreement between the parties as contended by the plaintiff. The execution of the oral agreement in 2017 and the date of filing of the suit after the competent authority passed the eviction order are also rightly considered as relevant factors for deciding the application for interim relief.

18. The issue regarding the defect of jurisdiction of the competent authority to pass an order of eviction is also considered by the trial court. The order of eviction was

challenged in this court and withdrawn. So the eviction order stands confirmed. Even the order passed by this court imposing cost while permitting withdrawal stands confirmed, and the Hon'ble Apex Court only reduced the amount of costs. Thus, at this stage, the appellant would not be entitled to seek any protection of possession on the ground that a prayer is made to challenge the eviction order passed by the competent authority on the ground of jurisdiction and nullity. The appellant was a party to the eviction proceedings, and she has admittedly withdrawn the writ petition filed before this court to challenge the order of eviction. Once the appellant has withdrawn her challenge to the eviction order passed by the competent authority, the appellant would not be entitled to any interim relief on the ground that she has challenged the eviction order in a suit by contending that the order is a nullity.

19. The Hon'ble Apex Court in the case of ***M. Gurudas***, held that while considering an application for injunction, the court would pass an order having regard to the three principles of prima facie case, balance of convenience and irreparable injury. It is also held that while arriving at the

prima facie finding of fact, the court not only must arrive at a conclusion that a case for trial has been made out, but also other factors requisite for the grant of an injunction, including balance of convenience, irreparable injury and whether the contention of the plaintiff is bonafide. In the decision of ***K. Nanjappa***, the Hon'ble Apex Court held that when a plaintiff seeks a decree for specific performance of the sale of an immovable property on the basis of an oral agreement or a written contract, a heavy burden lies on the plaintiff to prove that there was consensus ad idem between the parties for a concluded contract.

20. In the present case, the appellant has neither made out any prima facie case nor can a balance of convenience be said to be in favour of the appellant. The aforesaid facts make it apparent that, only to defeat the eviction order passed by the competent authority, the present suit was filed. Thus, the appellant would not be entitled to seek interim relief on the ground that there would be any irreparable injury to the appellant. It is not in dispute that the leave and licence agreement was never executed in the individual name of the appellant, and the leave and licence agreement was only in

the name of the company, and the appellant claims to be in possession in the capacity of director of the company. Thus, in view of these facts, the decisions of the Hon'ble Apex Court in the case of ***M. Gurudas*** and in the case of ***K. Nanjappa*** would not be of any assistance to the arguments made on behalf of the appellant. So far as the legal principles in the case of ***Achutananda Baidya*** are concerned, the same would not be relevant at this stage for deciding the prayer for interim injunction, which is a discretionary relief. The supporting evidence, including any oral evidence, to support the pleadings on oral contract, shall be considered at the time of trial, and the appellant would not be entitled to any discretionary relief based on the pleadings regarding oral contract.

21. Considering the pleadings of the appellant regarding payment of the amount of Rs. 3 crores in cash, I find it necessary to refer to the recent decision of the Hon'ble Apex Court in the case of ***Correspondence, RBANMS Educational Institution vs. Gunashekar and Another***[4]***.*** The Hon'ble Apex Court has directed that whenever a suit is filed with a claim that Rs. 2,00,000/- and above is paid by cash towards any

4 2025 SCC OnLine SC 793

transaction, the courts must intimate the same to the jurisdictional income tax department to verify the transaction and the violation of Section 269ST of the Income Tax Act, if any. The relevant directions issued by the Hon'ble Apex court read as under :

> *"(A) Whenever, a suit is filed with a claim that Rs. 2,00,000/- and above is paid by cash towards any transaction, the courts must intimate the same to the jurisdictional Income Tax Department to verify the transaction and the violation of Section 269ST of the Income Tax Act, if any,*
>
> *(B) Whenever, any such information is received either from the court or otherwise, the Jurisdictional Income Tax authority shall take appropriate steps by following the due process in law,*
>
> *(C) Whenever, a sum of Rs. 2,00,000/- and above is claimed to be paid by cash towards consideration for conveyance of any immovable property in a document presented for registration, the jurisdictional Sub-Registrar shall intimate the same to the jurisdictional Income Tax Authority who shall follow the due process in law before taking any action,*
>
> *(D) Whenever, it comes to the knowledge of any*

Income Tax Authority that a sum of Rs. 2,00,000/- or above has been paid by way of consideration in any transaction relating to any immovable property from any other source or during the course of search or assessment proceedings, the failure of the registering authority shall be brought to the knowledge of the Chief Secretary of the State/UT for initiating appropriate disciplinary action against such officer who failed to intimate the transactions."

22. In view of the directions issued by the Hon'ble Apex Court, a copy of this order be forwarded to the learned Registrar (Judicial-I) for forwarding a copy of this order along with a copy of the plaint to the jurisdictional income tax department.

23. In view of the aforesaid facts and circumstances as discussed above and for the reasons recorded above, the impugned order would not require any interference by this court.

24. The appeal from order is therefore dismissed.

25. In view of the disposal of the appeal, pending interim applications are disposed of as infructuous.

26. At this stage, learned counsel for the appellant seeks protection to enable the appellant to approach the Apex court. In the facts and circumstances of the case, no coercive action shall be taken against the appellant till expiry of a period of six weeks from the date of uploading the copy of the order on the website.

[GAURI GODSE, J.]