

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 411 OF 2025
WITH
INTERIM APPLICATION NO.10154 of 2025
IN
APPEAL FROM ORDER NO. 411 OF 2025

Jayesh Navalshankar Joshi

Appellant
.. (Orig. Plaintiff)

Versus

Shree Laxmi Estate Pvt. Ltd. and Anr.

Respondents
.. (Orig. Defendants)

-
- Ms. Rashmi Natwarlal Jani, Advocate for Appellant.
 - Mr. Bhavesh Parmar a/w Ms. Reshma Nair i/b Mr. Devmani Shukla, Advocates for Respondent No.1
 - Mr. Sachin Vajale i/b Komal Punjabi, Advocates for Respondent No. 2 – MCGM.

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CORAM : MILIND N. JADHAV, J.

DATE : DECEMBER 11, 2025.

P.C.:

1. Heard Ms. Jani, learned Advocate for Appellant and Mr. Parmar, learned Advocate for Respondent No.1 and Mr. Vajale, learned Advocate for Respondent No.2 – MCGM. Parties are referred to as Plaintiff and Defendants for convenience.

2. This Appeal from Order is filed for challenging order dated 21.02.2025 passed by the City Civil Court Borivali Division, Dindoshi in Notice of Motion No. 2856 of 2023 in LC Suit No. 1340 of 2022. The Notice of Motion is rejected. Though in the grounds of challenge to the impugned order it is pleaded that the Court which passed the order

was biased and prejudiced and acted in collusion with Respondent No. 1 - Landlord and Respondent No. 2 - Municipal Corporation, learned Advocate for Appellant has fairly not pressed the said ground. Rather she has extensively argued on merits of the matter. Plaintiff filed Notice of Motion seeking temporary injunction restraining Defendant No.2 - Corporation from issuing full Commencement Certificate to Respondent No. 1 - Developer as per approved plan for construction of a high end commercial building on the suit land / suit property. Plaintiff's case is that unless and until Permanent Alternate Accommodation Agreement (for short "**PAAA**") in the newly constructed building and settlement is arrived at between Plaintiff and Defendant No. 1 as per Guideline 1.15 of Development Control Regulation No.33(7), there should be an injunction and embargo and construction should be stalled.

2.1. Ms. Jani, learned Advocate for Plaintiff would argue that Plaintiff was tenant of Commercial Unit No. 124 / 16 in the original property / building under the name of Union Hosiery which went in for redevelopment. Grievance of Plaintiff emanates from the fact that despite Plaintiff being a statutory tenant and redevelopment being admittedly almost completed, right of Plaintiff is not yet recognized and it has been kept pending.

2.2. On the above facts, Notice of Motion No. 2856 of 2023 is filed seeking temporary injunction. Defendant No. 1 – Developer / Owner / Landlord opposed the relief on the ground of law as well as equity. It is Defendant No.1's case before the Trial Court and this Court that Plaintiff has filed RAD Suit No. 221 of 2019 before Small Causes Court seeking declaration as tenant in respect of Plaintiff's holding in Unit No.124 / 16. He would submit that if Plaintiff succeeds undoubtedly he will be entitled to alternate Accommodation. Defendant No.1's has stated that Plaintiff has previously filed Notice of Motion No. 2866 of 2019 for seeking injunction against demolition of the suit structure but no relief was granted by the Civil Court.

3. Mr. Parmar, learned Advocate for Respondent No.1 would submit that for the same cause of action, present Notice of Motion No. of 2856 of 2023 is filed before Trial Court. He would submit that by order dated 13.12.2022 passed in previous Notice of Motion No. 2148 of 2022 in the same present suit proceedings, identical relief was rejected. This is an extremely strong circumstances. It is seen from the record that the present Notice of Motion No. 2856 of 2023 filed by Plaintiff in LC Suit No. 1343 of 2022 is infact a third attempt by Plaintiff for seeking the same relief of injunction against Defendant No. 1 and declaratory relief against the Corporation. In law such a repeated course of action cannot be allowed or countenanced.

4. Ms. Jani, learned Advocate for Plaintiff would argue that she would like to challenge the alternate area that would be reserved for the Plaintiff as alternate accommodation since according to her instructions the Defendant No.1 has reserved area admeasuring 50 square meters only. She has stressed on this issue by referring to the document namely Area Certificate of the premises held by Plaintiff appended at Exhibit "D" at page No. 222. According to the area certificate, Plaintiff's original premises is shown as 67.82 square meters carpet area as stated therein. She has argued vehemently that if Plaintiff is entitled to alternate rehabilitation area subject to decision of the Small Causes Court in the RAD Suit proceedings filed by Plaintiff then he should be given 67.82 square meters as permanent alternate area by Defendant No.1 post redevelopment.

4.1. To counter this submission, attention is invited to page No. 241 which is the letter dated 09.08.2019 issued by the Corporation to Defendant No. 1 – Landlord. In that letter the areas held by all original tenants in the structures prior to demolition of the original building on the ground and first floor are mentioned. It is seen that as against the structure which was held by Plaintiff in the name of Union Hosiery, the area is shown is 63.03 square meters. In both documents namely Area Certificate at page No.222 and letter at page No.241 there is a dichotomy which appears. Ms. Jani, learned Advocate for Plaintiff desires that alternate area should be read as carpet area whereas in the

letter of the Corporation at page No. 241, the word “carpet area” appears in the introduction whereas the word “built up” appears in the table where the actual areas are mentioned individually.

5. Plaintiff's case is based on Area Certificate at page No. 222. In that letter the Corporation states categorically that measurements are taken on site without verifying the authorization of the structure under reference. Both these letters are issued in the year 2019 and 2020, hence whether the Plaintiff will be entitled to carpet or built up area as alternate accommodation will be a *lis* to be decided at the Suit trial. At the interim stage and challenge to interim order, I cannot decide it.

6. Ms. Jani, learned Advocate for Plaintiff has taken me through several documents and correspondence appended to the memo of Appeal from wherein it is argued vehemently that Plaintiff is the proprietor of Union Hosiery and therefore entitled to alternate accommodation from Defendant No. 1 - landlord who is the developer. I need not refer to those documents for deciding the present Interim Application and Appeal from Order, since the substantive right of the plaintiffs will only be dependent on the outcome of the RAD Declaratory suit filed by Plaintiff before the learned Small Causes Court. There also appears to be conflict of interest on facts which are noted in paragraph No. 4 of the impugned order qua rights of

claimants in the suit property which is a tenanted property. Those rights can undoubtedly be decided separately in appropriate proceedings because Plaintiff seeks to rely upon a Will dated 07.09.2011 of his late mother and some statement made by his sister in support of his case. That issue does not have any effect on the present *lis*. In the impugned order the learned Trial Court has categorically held that once it is an undisputed fact that RAD Declaratory suit seeking declaration of tenancy is filed by Plaintiff in 2019 and pending then rights between the parties (landlord – Defendant No.1 and Tenant – Plaintiff) cannot be decided by the Civil Court in the substantive suit filed by the Plaintiff. Thus the substantive right of the Plaintiff in the present suit which even Plaintiff's Advocate accepts at the time of arguments is that the Plaintiff's right shall be subject to the outcome of the RAD Declaratory Suit No. 221 of 2019.

7. It is seen that Defendant No. 1 landlord purchased the entire property by registered Deed of Conveyance dated 05.04 2007 and name of Union Hosiery which is the propriety concern of Plaintiff's late father was shown as a tenant. It is Plaintiff's case that he continued the business after his father and therefore he is the statutory tenant. These contentions of Plaintiff are all *sub judiced* in the Small Causes Court in RAD Suit No. 221 of 2019. Therefore on this ground also Plaintiff cannot insist that the landlord / Developer / Defendant No.1 should enter into PAAA at this stage and if not done the development should

be restrained. Once the Plaintiff's substantive right which is *sub judiced* and not fructified as yet the redevelopment project cannot be halted and stalled at the behest of Plaintiff. Ms. Jani, learned Advocate for Plaintiff has vehemently argued that there is dichotomy as to who handed over possession to the Developer of the original premises before it was demolished. That issue is not at all germane for a decision in the present Interim Application or Appeal from Order. The name of the Plaintiff is contained and seen in the record.

8. Plaintiff has himself filed RAD Declaratory Suit which is pending decision. In the Affidavit-in-Reply dated 27.11.2025 filed by the Corporation it is stated that in so far as Plaintiff's case is concerned, Developer has vide his letter dated 31.07.2024 informed the Corporation that area admeasuring 50 square meters in the proposed redevelopment has been kept reserved by Defendant No. 1 and undertaking to that effect is also filed. It is Corporation's case that Plaintiff cannot seek mandamus and mandatory directions before the Trial Court or this Court because all acts of the Corporation regarding redevelopment, approval and sanction are strictly in consonance with due process of law. That apart Corporation has stated that the issue of declaration of Plaintiff's tenancy will be based upon the outcome of the declaratory suit filed by Plaintiff. Therefore Plaintiff cannot seek injunction on the entire project of development which will be to the detriment of the legitimate beneficiaries.

9. Sum and substance of the argument name by the parties is that RAD Declaratory suit filed by Plaintiff is pending in the Small Causes Court since 2019. Therefore subject to the outcome of that suit right of Plaintiff will be decided. What is observed by this Court is the fact that Plaintiff had filed an identical Notice of Motion No. 2148 of 2022 in the same present suit proceedings earlier on the same cause of action and grounds for the same relief. That motion was rejected on 13.12.2022.

10. Once again Plaintiff has filed an identical Notice of Motion which has been rejected by the impugned order dated 21.02.2025. The learned Trial Court while dismissing the motion has categorically in paragraph Nos. 17 to 26 held that right of the Plaintiff qua the Defendant No. 1 - landlord being the subject matter of the RAD suit cannot be decided in the present suit proceedings. Once that suit is decided only then Plaintiff will be entitled to alternate accommodation and as a consequence thereof he can thereafter execute PAAA with the developer / owner /landlord.

11. The learned Trial Court has rightly held that before the said suit is decided the project cannot be stalled and most importantly because of the facts and circumstances in the present case. Further guideline No.1.15 is not applicable to Plaintiff's case until Plaintiff succeeds in his declaratory suit. Therefore on balance of convenience

and irreparable harm caused to the parties the learned Trial Court has returned cogent findings in paragraph No.26 of the impugned order which do not call for any interference by this Court.

12. It is informed that the development is almost complete as stated by Mr. Parmar, learned Advocate for Defendant No. 1. Hence in that view of the matter, this Court can request the learned Small Causes Court to decide the RAD Suit no. 221 of 2019 expeditiously so that the Plaintiff can be provided with some solace and he will not have to wait endlessly till that RAD Suit is decided.

13. In view of the above observations and findings which are emanating from the record, the impugned order dated 21.02.2025 passed by the learned Trial Court cannot be faulted with at all.

14. It is a well reasoned and balanced order on *prima facie* consideration of Plaintiff's case, balance of convenience and irreparable loss which may accrue to the Defendant No.1 and all other beneficiaries in the redevelopment for which adequate reasons are given. Order dated 21.02.2025 is therefore upheld and confirmed.

15. However at the request of Ms. Jani, learned Advocate for Plaintiff / Appellant, direction is given to the learned Small Causes Court seized with hearing of RAD Suit No. 221 of 2019 to decide the said Suit as expeditiously as possible and in any event within a period of 8 months from today strictly in accordance with law on the basis of

Plaintiff's evidence and Defendant No.1's evidence in rebuttal. All contentions of the Plaintiff qua the area statement and any other issue are all expressly kept open to be decided in LC Suit No. 1343 of 2022 or any other proceedings that may be taken by Plaintiff strictly in accordance with law.

16. Without this Court giving any imprimatur on merits of the above it is needless to state that subject to outcome of RAD Suit No. 221 of 2019, Plaintiff or Defendant No.1 will have liberty to take appropriate steps as available to them in law.

17. With the above directions, the impugned order dated 21.02.2025 is upheld and confirmed and Appeal from Order is disposed of.

18. In view of the above, Interim Application, if any, is also accordingly disposed.

[MILIND N. JADHAV, J.]

Ajay

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by HARSHADA
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SAWANT
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