

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 11099 OF 2025
IN
FIRST APPEAL NO. 1778 OF 2008

M/s. Nikeeta Unique .. Applicant

IN THE MATTER BETWEEN :

Clement D'souza .. Appellant

Versus

M/s. Nikeeta Unique .. Respondent

Adv. S. B. Prabhawalkar, for the Applicant & Respondent in First Appeal.

CORAM: FIRDOSH P. POONIWALLA, J.

DATE: OCTOBER 15, 2025

P. C.

1. This Interim Application has been filed by the Respondent for modification of the Order dated 12th September, 2011 passed by this Court in Civil Application No. 4640 of 2008 in First Appeal No. 1778 of 2008.
2. The Appellant though served, including by substituted service, has not appeared even today. The Respondent has filed an Affidavit of Service dated 15th October, 2025.
3. The Applicant is the Original Respondent in the First Appeal and the Original Defendant in L.C. Suit No. 2230 of 1985. The said Suit was dismissed by the learned Judge of the Trial Court vide Judgement and Order dated 6th August, 2008.

4. Being aggrieved by the said Order, the Appellant preferred First Appeal No. 1778 of 2008 and also took out Civil Application No. 4640 of 2008 in the said First Appeal. In the said Civil Application No. 4640 of 2008, a learned Single Judge of this Court was pleased to grant ad-interim relief of status quo on 17th October, 2008.

5. Thereafter, the said Appeal was admitted on 20th June, 2011 and the ad-interim relief granted earlier was continued. On 18th August, 2011, the ad-interim relief was continued till further orders. Finally, on 12th September, 2011, the ad-interim relief granted was continued till disposal of the Appeal.

6. The Applicant is a member of Stella Maris Co-operative Housing Society Ltd. ("the said Society") and is in beneficial enjoyment of Flat No. 104 on the 1st Floor of the Society Building. The said Society has issued Share Certificate No. 21 comprising of 5 shares of Rs. 50 each bearing distinctive nos. 96 to 100 (both inclusive) under Share Certificate dated 2nd July, 2025.

7. The Society Building was in a dilapidated condition and, therefore, the said Society, by passing the requisite resolution, has decided to redevelop the said property.

8. The said Society has entered into a Development Agreement dated 16th January, 2025 with M/s Victory Venture Developers. The developer has got the Plans sanctioned and obtained IOD for the purposes of re-development of the building of the said Society.

9. The said Society, vide its letter dated 28th June, 2025 addressed to the Applicants, has informed the Applicants that the builder has obtained the IOD and informed the Applicants that they need to vacate the said flat by clearing all the outstanding in respect of the arrears of the society.

10. Accordingly, it is the case of the Applicants that they have paid the entire arrears of the said Society and the said Society has issued Share Certificate in favour of the Applicants. The said Society has also called upon the Applicants to hand over possession to the builder for the purposes of demolition of the old building and also for redevelopment purpose.

11. Further, the Applicants states that, upon the Applicant's enquiry with the office bearers of the said Society and the developers, Applicant No.1 has been informed that developer is in the process of execution of Permanent Alternate Accommodation Agreement (P.A.A.A.) in favour of individual members of the said Society.

12. The Applicants state that, in view of the pendency of the First Appeal and *status quo* order granted by this Court, the Applicants are unable to vacate the flat in question and are also unable to sign and execute the P.A.A.A.

13. The Applicants further submit that there is a likelihood that the redevelopment of the property in the larger interest of the members of the said Society is likely to be delayed and submits that it is absolutely necessary for the Applicants to seek the leave of this Court to enable the Applicants to

sign and execute the P.A.A.A. which will be executed by M/s. Victory Venture Developers in favour of the Applicants herein as members of the said Society and further leave to hand over quiet, vacant and peaceful possession of the flat in question and accept all the monetary benefits such as compensation in lieu of temporary alternate accommodation, shifting charges, brokerage charges, etc. which is payable by the Developer as per the clauses of the Development Agreement and the P.A.A.A. and to accept the Permanent Alternate Accommodation upon completion of the said building if the Appeal is not disposed of till then.

14. In my view, if the reliefs sought by the Applicants are not granted and the status quo order is not modified, then the same would inordinately delay the redevelopment of the society which would not be in the interest of either the Applicants or the said Society.

15. In the above circumstances, and for the aforesaid reasons, I pass the following order:

a) The order dated 12th September, 2011 passed by this Court in Civil Application No. 4640 of 2008 in first Appeal No. 1778 of 2008 of status quo is modified.

b) The Applicants are permitted to sign and execute the Permanent Alternate Accommodation Agreement that will be executed by M/s Victory Venture Developers in favour of the Applicants herein as member of the Stella Maris Co-operative Housing Society Ltd and

further be permitted to hand over quiet, vacant and peaceful possession of Flat in question and accept all the monetary benefits such as compensation in lieu of temporary alternate accommodation, shifting charges, brokerage charges, etc. which is payable by the Developer as per the clauses of the Development Agreement and the P.A.A.A. and to accept the Permanent Alternate Accommodation upon completion of the said building.

c) The Applicant and its partners furnish an undertaking to the Court to the effect that signing of P.A.A.A. and obtaining possession of new premises and of other benefits mentioned herein above shall be subject to the outcome of the First Appeal and if the Applicants do not succeed in the First Appeal and if the original Appellants succeed in the First Appeal then, in that event, the Applicant shall hand over possession of the flat to the original Appellants and shall comply with the orders passed by this Court. The said undertaking is accepted by the Court.

16. Interim Application is disposed of in the aforesaid terms. There shall be no order as to costs.

17. Place the Appeal for hearing on 12th November, 2025.

[FIRDOSH P. POONIWALLA, J.]