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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 12637 OF 2025
WITH
INTERIM APPLICATION NO. 9370 OF 2025
IN
FIRST APPEAL NO. 1236 OF 2025

Salma Aslam Memon

...Applicant/
Appellant

Versus

Abdul Sattar Khalique Qureshi (Since deceased
through his legal heirs) 1. Shamim Bano Abdul
Sattar Qureshi And Ors.

...Respondents

Mr. Sanjay Prabhu for the Applicant/Appellant.
Mr. Umair Ansari for Respondents.

CORAM : M.M. SATHAYE, J.
DATE : 3rd DECEMBER, 2025

P.C. :

1. Heard learned counsel for the parties. Perused the record.
2. By this application, unsuccessful Plaintiff is seeking stay to the impugned Judgment and Decree dated 06.05.2025 passed by the City Civil Court Mumbai in S.C. Suit No. 4956 of 2008 by which suit for specific performance of oral agreement is dismissed. An additional prayer is made seeking injunction against the Respondents/Defendants restraining them from taking steps to evict the Appellant from the suit flat (Flat No. 703, 7th floor, B-Wing, New Cadel Queen S.V. S. Marg (Cadel Road), Mahim, Mumbai) under eviction order dated 30.06.2008 passed by the Competent Authority under applicable Rent Act.
3. At the outset, it is necessary to record that the impugned

Judgment and Decree is a decree of dismissal of suit and as such can not be stayed. In that view of the matter, the prayer of interim stay is rejected.

4. So far as the prayer of interim injunction against Defendants not to take steps to evict the Appellant is concerned following facts are necessary to be considered.

5. The Appellant is Plaintiff in a suit for specific performance of an oral agreement between the parties for sale of the suit flat. Admittedly, the Respondents are owners of the suit flat and there existed a registered leave and licence agreement between parties dated dated 20.05.2005.

6. The Respondents filed eviction proceedings under the provisions of section 24 of the Maharashtra Rent Control Act, 1999 ('MRC Act' for short) before the Competent Authority for eviction of the Appellant from the suit flat. There is no dispute that the said proceedings (Case No. 45/2007) resulted in the order of eviction dated 30.06.2008. The eviction order was challenged by the Appellant before the Revisional Authority in Rev.No.212/2008, which confirmed the same by order dated 26.02.2009. The Appellant thereafter filed CRA No. 479/2009 in this Court challenging the order of Revisional Authority. This Court, by order dated 16.09.2009 confirmed the order of eviction, however, it was clarified that the order of eviction passed under the provisions of MRC Act, will not be executed while there subsists a restrictive order against taking possession passed in a suit filed by the Appellant being Suit No. 3357 of 2008. This suit was filed by the Appellant in the High Court at the relevant time, which was subsequently transferred to the City Civil Court and numbered as S.C.Suit No. 4956 of 2008 i.e. the present subject matter suit.

7. During the pendency of the present subject matter suit, the

City Civil Court rejected interim protection/injunction by order dated 30.03.2015. The Appellant challenged it by filing Appeal from Order No. 711 of 2015, which was allowed after hearing both the sides, on 07.09.2015, directing the Respondents not to disturb the possession of the Appellant pending the present subject matter suit.

8. In these circumstances, the present subject matter suit was heard by the Trial Court and Appellant's claim of specific performance has been rejected, dismissing the suit, under the impugned Judgment and Decree. The Appellant has been held entitled to get back the amount deposited by her in the Court.

9. Learned Counsel for the Respondents stated on instructions that Respondents have no objection if the amount is withdrawn by the Appellant with accrued interest.

10. Learned Counsel for the Appellant submitted that interim injunction which was granted by this Court during the pendency of the suit and it is required to be continued during pendency of the appeal. He submitted that the case of oral agreement is duly supported by the witnesses examined on behalf of the Appellant and the Trial Court has not considered the same in proper prospective. He submitted that therefore the protection is necessary during the pendency of appeal.

11. On the other hand, learned Counsel for the Respondents has strenuously opposed the prayer. He submitted that Appellant's own witness who is stated to be a responsible person in the community (PW-4 Mr. Mohammed Usman Khan) has not supported the case of any oral agreement and payment of earnest money in cash. That the witness for Respondents has not been cross-examined by the Appellant. Relying on the affidavit-in-reply dated 28.07.2025, he submitted that as on today, the Respondents / their family members are required to stay under leave and licence, when they have their own suit flat occupied by the

Appellant. Certain Leave and Licence agreements are produced in support of his submissions.

12. I have considered the submissions and perused the record.

13. At the outset, it is necessary to note that the whole case of claimant of specific performance is based on an oral agreement. The alleged MoU between the parties is neither signed by Respondents nor it is notarised. The case of oral agreement is pitched against a registered document of leave and license between the parties on the basis of which the Appellant was inducted in suit flat initially. The Appellant/Plaintiff failed to cross-examine the Respondents' witness DW-1 Rahim Qureshi who has denied the case of oral agreement. The Appellant's own witness PW-4 Mr. Mohammed Usman Khan has not supported the case of the Appellant about payment of earnest money in cash pursuant to alleged oral agreement. The Trial Court has considered all this evidence on record and has come to a conclusion that there is no sufficient material to hold the oral agreement as proved so as to grant specific performance thereof. The Trial Court has permitted the Appellant to get back the amount deposited in the Court, which she can withdraw with interest.

14. In the aforesaid facts and circumstances, there is no strong prima facie case in favour of the Appellant. The conclusion drawn by the Trial Court is found to be well founded on facts and law, even at interim stage.

15. This Court cannot lose sight of the fact that Respondents being licensor under a registered leave and license agreement, have followed due process of law and have secured the eviction order against the Appellant, which is confirmed upto this Court. It is only due to the

interim order that was passed by this Court during the pendency of the suit that eviction order could not have been executed. It is therefore clear that the Appellant has maintained a parallel suit based on oral agreement which is found to be not proved. The Respondents/owner/landlord is thus facing this second round of litigation in the form of claim for specific performance.

16. In these circumstances, in my considered view, this is not a fit case to continue the interim injunction as granted during the pendency of the suit. **The Interim Applications are accordingly dismissed.**

17. Considering the statement made by the learned Counsel for the Respondents, the Appellant is at liberty to withdraw the amount deposited by her in the Court along with accrued interest, if any.

18. At this stage, learned counsel for the Appellant seeks continuation of the interim protection. Considering that the Appellant was protected for a long time, the interim protection is continued for a period of 6 weeks from today. It is clarified that after a period of 6 weeks from today, the Respondents shall be at liberty to take steps seeking possession of the suit flat and for execution of eviction order.

(M.M. SATHAYE, J.)