

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO. 12953 OF 2025
WITH
FIRST APPEAL NO. 2282 OF 2025**

Amit Hiralal Pal & Ors ...Applicants
IN THE MATTER BETWEEN
Hiralal Surajdin Pal (since Deceased Deleted) & Ors. ...Appellants
Versus
Harkesh Motilal Pal (since Deceased Deleted)
Thr Lrs. 1.1 Rita Harkesh Pal & Ors. ...Respondents

Mr. Anil R. Mishra a/w. Mr. U R. Singh for the Applicants
Adv V S Bhadkamkar for Respondent Nos. 1(a) to 1(f)
Adv. Shriniwas C. Singh for Respondent No. 6

CORAM : M. M. SATHAYE, J.

DATED : 10th NOVEMBER 2025

P.C.:

1. Heard learned counsel for the Applicants and learned counsel for contesting Respondent Nos. 1(a) to 1(f)
2. This is an Application by legal heirs of the Defendant No. 3, against whom the impugned judgment and decree is passed on 25/09/2025 by City Civil Court at Grater Bombay in L.C. Suit No. 2891 of 2011.
3. By the impugned judgment and decree, the suit filed by the Respondent Nos. 1(a) to 1(f) is decreed thereby declaring that the original Plaintiff-Harkesh Motilal Pal is a co-tenant having half share in the Flat No. 1104, C-Wing, Building No. 1, Shiv Koliwada CHS, Scheme 6, Road No. 28, Near Rupam Cinema, Sion (East), Mumbai – 22 which Defendant No. 3 got

after re-development in lieu of original suit property. Admittedly the original suit property was a room in BMC Chawl Bo. 1, House No. 5, Sion-Koliwada owned by Respondent - Municipal Corporation.

4. Learned counsel for the Applicants invited the Court's attention to issues framed by the learned Trial Judge. Perusal of the issues would indicate that under issue no. 2, it is held that Plaintiff proved that he has right in the suit premises alongwith Defendant No. 3 as a joint occupant and tenant.

5. I have perused the impugned judgment.

6. Contesting parties are related to each other. One Surajdin Shivgulam Pal was the original tenant/occupant, whose son is Defendant No. 3 and grandson is Plaintiff. Thus suit was filed by a nephew against the uncle. It is the case of the Plaintiff that after the death of Surajdin, both the Plaintiff and Defendant No. 3 are entitled as co-tenants. On the other hand, it is the case of the Defendant No. 3 that during lifetime of the said Surajdin (who expired in 1985), since Defendant No. 3 looked after him, tenancy is transferred in his favour. Defendant No. 3 has relied on agreement dated 01/02/1975 claiming tenancy. It is submitted that the said tenancy document of February, 1975 is not challenged. Rent receipts standing in the name of Defendant No. 3 (Hiralal) dated 25/09/1981 and 15/6/1999 are also relied upon.

7. Perusal of the plaint indicates that the cause of action, as disclosed by the Plaintiff himself, is that when the Developer approached the residents of area showing willingness to re-develop, Defendant No. 3 had given name of the Plaintiff also as an occupant, however, it was later on learnt that his

name was removed.

8. Trial Court has disbelieved case of tenancy from 1975. The Suit is filed in the year 2011 without challenging the tenancy document of 1975. Earlier rent receipts of 1981/1999 also are required to be considered.

9. Considering above circumstances, pending substantive first appeal, the impugned judgment and decree is required to be stayed partially. Hence the application is disposed of by following order :

(a) Clauses 1, 2 and 4 of operative part of the impugned judgment and decree dated 25/09/2025 are stayed during the pendency of the Appeal.

(b) It is clarified that **Clause 3** of operative part of the impugned judgment and decree **is not stayed**. The Appellants remain restrained from alienating or creating 3rd party interest in respect of subject matter Flat No 1104.

(M. M. SATHAYE, J.)