

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 15405 OF 2025

Manilal and son

...Petitioner

V/s.

Amubhai Damjibhai Shah and Anr.

...Respondents

Mr. Pradeep J. Thorat *with Mr. Manish Gala with Mr. Nilesh Gala and Minil Shah i/b Mr. Nilesh Gala for Petitioner.*

Mr. Prasad Dhakephelkar, *Senior Advocate (through VC) with Mr. Anoushak Daver, Mr. Deep Dighe and Mr. Nimish A. Chvekar i/b Mr. Sachin Masurkar for Respondent No. 2.*

Mr. Sanjeev Chandiramani *CEO present before Court.*

CORAM: SANDEEP V. MARNE, J.

DATED: 15 APRIL 2026.

P.C.:

1) The Petition challenges order dated 30 July 2025 passed by the Executing Court on Application at Exh-53. The Application was filed by the Petitioner/Decree Holder seeking injunction in respect of flat Nos. 401 and 402 on account of failure on the part of the judgment debtors to act in accordance with the consent terms dated 31 July 2015 resulting in a decree.

2) I have heard Mr. Thorat, the learned counsel senior Advocate appearing for Petitioner and Mr. Dhakephelkar, the learned Senior Advocate appearing for Respondent No. 2. After having

considered, the submissions canvassed by the learned counsel appearing for parties, there is no dispute to the position that under the Agreement for Permanent Alternate Accommodation (PAAA) executed with the Petitioner, Respondent No. 2 has an obligation to put Petitioner in possession of flat admeasuring 920 Sq. ft. That flat was identified as flat No. 401 situated on 4th floor in the newly constructed building. However, Mr. Dhakephelkar, on instructions, submits that flat No. 401 has been mortgaged with a financial institution. Thus, as of now Respondent No. 2 is unable to put Petitioner into possession of flat No. 401. Mr. Dhakephelkar has instead given an option to the Petitioner to opt for flat No. 102 which admeasures 957 sq. ft. Alternatively a suggestion is given that after a period of 15 months, Respondent No. 2 shall clear mortgage in respect of flat No. 401 and handover possession thereof to the Petitioner.

3) It is admitted position that as of now, the building does not have an occupation certificate. In addition to disputes over flat No. 401 and flat No. 102, the Respondent No. 2 has also not paid to the Petitioner transit rent from April 2021. According to Mr. Thorat, as on 30 April 2026, the total arrears of transit rent are to the tune of Rs. 82,48,268/- without the element of interest. Thus, Respondent No. 2-Developer has failed to pay transit rent to the Petitioner since April 2021. Respondent No. 2 is also not in a position to handover possession of flat No. 401, which is agreed under the PAAA. Upon a query put by this Court, Respondent No. 2 has expressed inability to clear the arrears of transit rent. In my view therefore, it would be appropriate to secure interest of Petitioner by injuncting Respondent No. 2 from creating any further

rights in respect of both flat No. 401 as well as flat No. 102. Granting injunction in respect of flat No. 102 is necessary since flat No. 401 is under mortgage. If Respondent No. 2 fails to clear dues to the financial institution flat No. 401 would be in danger of being alienated by the financial institution. It would therefore be necessary to injunct Respondent No. 2 from creating any rights even in respect of flat No. 102. Petitioner has thus made out a prima facie case for grant of temporary injunction during pendency of Execution Application. Petitioner would suffer irreparable loss if injunction is refused as Respondent No. 2 would alienate the flats thereby frustrating claim of Petitioner balance of convenience is also tilted in favour of Petitioner.

4) Accordingly, I proceed to pass following order:-

(i) Impugned order dated 30 July 2025 is set aside.

(ii) During pendency of Execution Application No. 55 of 2021, Respondent No. 2 shall stand injuncted from creating any further rights or parting with possession of flat Nos. 401 and flat No. 102 in the redeveloped building.

3) Writ Petition is allowed in above terms. There shall be no order as to cost.

[SANDEEP V. MARNE, J.]