

Ajay

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

**APPEAL FROM ORDER NO. 272 OF 2026
WITH
INTERIM APPLICATION NO. 1749 OF 2026
IN
APPEAL FROM ORDER NO. 272 OF 2026**

Mrs. Neela Sudhir Shah

Appellant
.. (Orig. Plaintiff)

Versus

Sejal Paresh Kuvadia and Ors.

Respondents /
.. Orig. Defendants

.....

- Mr. Amrut Joshi, Advocate i/by Mr. Rohit Shetty for Appellant.
- Mr. Shahrukh Shaikh, Advocate for Respondent No.3.
- Mr. Mario Mendes, Advocate i/by P.Vaz and Co. for Respondent No.4 – Society.
- Mr. Harshal Hasmukh Savla, Advocate i/by Mr. Mayur Vinod Faria for Respondent No.5.

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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 27, 2026.

P.C.:

1. Heard Mr. Joshi, learned Advocate for Appellant; Mr. Shaikh, learned Advocate for Respondent No.3; Mr. Mendes, learned Advocate for Respondent No.4 – Society and Mr. Savla, learned Advocate for Respondent No.5.

2. Exigency is mentioned by Mr. Joshi, learned Advocate for Appellant who is Plaintiff before the learned Trial Court. Plaintiff is the mother and Defendants in the Suit proceedings before the Trial

Court are the daughters. The *lis* is in respect of possession of a flat. According to Plaintiff, when the original building went for redevelopment she was in occupation and possession of the said flat and had handed it over to the Society for development.

3. According to Plaintiff, now the newly redeveloped building is ready and possession is to be handed back, but because of the *lis* between the Plaintiff and her two daughters, there is some impediment. Learned Trial Court has refused to grant interim relief because of which the present Appeal From Order is filed before this Court.

4. On 05.12.2025, after hearing the learned Advocate for Appellant, the following order was passed:-

“1. Not on Board. Mentioned by way of filing praecipe dated 05.12.2025. Perused the praecipe.

2. Heard Mr. Pai, learned Advocate for Appellant.

3. Notice of Motion of Plaintiff has been rejected. Plaintiff is the wife of the deceased and was resident of the subject flat alongwith the deceased and at the time of handing over the said flat, it was handed over by the deceased and the Plaintiff being husband and wife together.

4. Admittedly, Plaintiff was resident of flat when it was handed over to Developer for development. Development is now completed. When Plaintiff sought possession of the re-developed flat in lieu of earlier flat, the Society has responded by stating that Plaintiff's son and two daughters have a caveatable interest in the said flat by virtue of they being children of Plaintiff and her deceased husband and therefore Society has refused to grant hand over possession. This is informed to me by Mr. Pai

5. Mr. Pai informs the Court that Developer is also party to suit proceedings and they have issued a reply reiterating the aforesaid stand without filing Affidavit-in-Reply in the Notice of

Motion.

6. He would submit that it is well settled and trite law that the person who hand over possession has to be returned back the possession of the redeveloped flat.

7. In that view of the matter, he would also argue that Society has no right to withhold handing over of the said flat to Plaintiff. He would submit that if at all her son and daughters have any caveatable interest in the subject flat or if they have raised objections, they can approach the Civil Court of appropriate original civil jurisdiction and seek appropriate relief therein.

8. Mr. Pai argues that Society has confirmed the fact that the said flat was occupied by the Plaintiff – Appellant and her husband at the time of handing it over to the Developer prior to the development.

9. In view of the above, the impugned order is under challenge.

10. Copy of this order, Interim Application and Appeal from Order shall be served on Respondents forthwith.

11. Respondents are directed to remain present either through themselves or through their Pleader / Advocates on the next adjourned date and file Affidavit-in-Reply within a period of two weeks from today since in view of the aforesaid facts when the subject flat has been handed over by Appellant alongwith her husband she should be entitled to possession of the said flat back from the Developer. Affidavit-in-Rejoinder, if any, to be filed within a week thereafter.

12. Stand over to 06th January, 2026.

13. Praecipe is disposed.”

5. Mr. Joshi draws my attention to the above order. In view of the above, the present Appeal From Order deserves to be heard expeditiously since Mr. Joshi, learned Advocate informs the Court that Plaintiff in her old age is now required to live on leave and license outside despite she being entitled to possession of said flat in the redevelopment. Even if there is a lis between parties, in so far as possession in the interim is concerned, the same can be given to

Plaintiff in view of the decision in the case of *Vipul Fatehchand Shah Vs. Nav Samir Co-operative Housing Society and Ors.*¹ and *Ritesh Haldar Vs. Elie Housing LLP and Ors.*² passed by this Court.

6. Defendants are directed to remain present before this Court on the next adjourned date either themselves or through Advocate. Copy of this order shall be served on Defendants by the Advocate for Appellant.

7. Developer's Advocate and Housing Societies Advocates are present before the Court and confirm the aforesaid position.

8. Stand over to **30th April 2026**. To be placed under the caption '**First on Board**'.

[MILIND N. JADHAV, J.]

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¹ Comm. Appeal (L) No.25162 of 2023 decided on 06.10.2023
² 2025 SC (OnLine) Bom. 6710