

Akash

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 & Ors.

Respondents/
.. Orig. Defendants

.....

- Mr. Amrut Joshi, Advocate i/by Mr. Rohit Shetty for Appellant.
- Mr. Shahrukh Shaikh, Advocate for Respondent No.3
- Mr. Nitin G. Raut, Advocate a/w Ms. K. Hegde & Mario Mendes i/by P. Vas & Co., for Respondent No.4
- Mr. Mayur Vinod Faria, Advocate a/w Harshal Hasmukh Savla, for the Respondent No.5.

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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 30, 2026

P.C.:

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

2. On 27th April 2026 after hearing the parties this Court passed the following order :-

“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. and Ritesh Halder Vs. Elie Housing LLP and Ors. 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'."*

3. The *lis* of the parties is *prima facie* evident from the above terms. Admittedly, the learned Advocates for the Society and the Developer are both before me and they confirm the aforesaid position that when the Society buildings went in for re-development, possession of the subject flat was handed over to the Society by the husband of the Appellant before me. The Appellant is the wife of the deceased member. They both were living together in the said flat. Hence, it cannot be conceived that the wife who was living in the said flat could not be entitled to possession of the said flat on re-development, but subject to the dispute being decided by the Court.

4. However, in the present case, in the interregnum, there is *lis* between the parties, the daughters of the Appellant are claiming a share, entitlement of their share and the dispute is convoluted and undecided as yet. Rather it is now the subject matter of suit proceeding which is initiated by the Appellant in the Trial Court.

5. Mr. Joshi, learned Advocate, in his usual fairness immediately interrupts the Court so that the facts are recorded correctly. He would submit that the Appellant has filed a suit seeking injunction and declaration in that regard. He would submit that the Plaintiff who is the Appellant before the Court be granted leave by the Court to amend the suit plaint before the Trial Court to the extent of amending it to claim the shares by the Plaintiff. Once again in his usual fair-mindedness Mr. Joshi, learned Advocate informs the Court that the Respondents, who are the daughters of the Appellant, will undoubtedly be entitled to their shares in the suit flat. The fairness with which Mr. Joshi, learned Advocate makes his submissions is appreciated by the Court. In fact, Suit property belonged to the father of Defendants and husband of Plaintiff. Defendants are the 2 daughters.

6. He would therefore submit that whatever may be the shares to which the Defendant – daughters are entitled to they would undoubtedly be entitled to the same but subject to determination of the suit proceedings. He would submit that the decision of this Court which has been adhered to and referred to in the previous order in the case of *Ritesh Halder Vs. Elite Housing LLP & Ors*¹ needs to be applied in the present case to handover the redeveloped flat to the Plaintiff mother and wife of deceased. He would submit that the suit flat is ready and available for handing over. The Developer confirms the said

¹ Commercial Arbitration Appeal (L) No.14486 of 2025 decided on 24th June 2025

fact and equally, learned Advocate for the Society also confirms the said fact. They in fact, voice their no objection for handing over the suit flat. In one way if the suit flat is handed over to the Appellant/Plaintiff she could also entail its prevention, augmentation and protection rather than keep it locked. Needless to state that if the said suit flat is handed over to the Appellant/Plaintiff she shall hold the same as an agent of the Court Receiver until determination of the *lis* between the parties in the Civil Suit which is pending before the Trial Court.

7. Considering the fact that this is *lis* between the mother and two daughters, the learned Advocate Mr. Joshi appearing for the mother would submit that considering her advanced age, this Court be pleased to expedite the suit proceedings. Having considered the request made by the Mr. Joshi, learned Advocate the following order is passed in the present case.

8. Before, I pass this order, it needs to be reiterated that Affidavit-of-Service dated 29.04.2026 has been filed by the Advocate for Appellant. This Affidavit-of-Service *prima facie* shows that Respondents – Defendants daughters of the Appellant have been served. The said Affidavit-of-Service has been taken on record. Despite service and intimation that the matter is going to be heard today, none is present for Defendants i.e. Respondent Nos.1 and 2. This Court cannot continuously keep adjourning matters, especially, in the

aforestated facts which are *prima facie* evident from the face of record.

9. In that view of the matter, the following order is passed to dispose of the present Appeal from Order and Interim Application. The impugned order dated 22.07.2025, stands quashed and set aside. Notice of Motion No.1699 of 2025 stands allowed with the following further directions :-

- (a) Suit flat shall be handed over to Plaintiff by the Developer and Society forthwith. Appellant-Plaintiff shall file an undertaking in this Court within 2 weeks that she shall hold the suit flat as an agent of the Court Receiver;
- (b) Court Receiver stands appointed with regard to the suit flat without payment of royalty and/or security;
- (c) Leave to amend the suit plaint is granted to the Appellant/Plaintiff to the extent of seeking an amendment for the respective share / share holding of the Appellant/Plaintiff and her two daughters who are the contesting Defendants before the Trial Court;
- (d) If any such amendment is prayed for, the learned Trial Court shall allow the same to be carried out in accordance with law.
- (e) Copy of the amended suit plaint shall be served on the Defendants who are daughters of the Appellant/Plaintiff.
- (f) The learned Trial Court shall determine the suit proceedings expeditiously in view of the fact that all parties before me are ladies and most importantly Appellant/Plaintiff is of advanced age.

10. Mr. Joshi, learned Advocate, also informs the Court that the Appellant/Plaintiff has one son but he is not involved in the dispute with regard to the subject flat. He is not contesting, though he may have a share in the subject flat which originally belonged to the husband of the Plaintiff and father of the Defendants – daughters.

11. Mr. Raut, learned Advocate for the Society, informs that the Society has no objection if the Developer hands over the flat to Plaintiff.

12. Needless to state that the Plaintiff will be put in possession of the suit flat and she will be responsible for paying maintenance of the said flat until she occupies and enjoys it as agent of the Receiver without payment of royalty and/or security and she shall not claim any equity by virtue of this order having been put in possession of the said suit flat and all her rights and that of the parties will be determined by the learned Trial Court in the suit proceedings including entitlement and shares.

13. All contentions of the Plaintiff and Defendants – daughters are expressly kept open before the Trial Court.

14. The Suit stands expedited with the above directions.

15. The Appeal From Order and Interim Application are both disposed in the above terms.

[MILIND N. JADHAV, J.]