

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (ST) NO. 6000 OF 2026
WITH
INTERIM APPLICATION (ST) NO. 6001 OF 2026
WITH
COURT RECEIVER'S REPORT NO. 8 OF 2026
WITH
INTERIM APPLICATION (ST) NO. 9032 OF 2026
IN
APPEAL FROM ORDER (ST) NO. 6000 OF 2026

Mozam Ali Mir

Appellant / Orig.
.. Plaintiff

Versus

The Mumbai Municipal Corporation and Ors.

Respondents /
.. Orig. Defendants

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- Mr. Anil Sakhare, Senior Advocate a/w. Ms. Aruna Savla, Ms. Divya V. Parab, Mr. Suraj Chauhan and Ms. Rashmi Visaria, Advocates i/by Ms. Divya V. Parab for Appellant.
- Mr. Birendra Saraf, Senior Advocate a/w. Mr. Vaibhav Charalwar, Mr. Yash Jain, Advocates i/by Yash Jain for Respondent No.4.
- Mr. Ashish Kamat, Senior Advocate a/w. Mr. Aditya Miskita, Mr. Shiraj Salelkar, Ms. Samiksha Rajput and Ms. Palak Saecha, Advocates i/by Lexicon Law Partners for Respondent No.5 – HRUB Infra.
- Ms. M.M. Satam, Section Officer, Court Receiver, High Court present.

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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 06, 2026.

P.C.:

1. Heard Mr. Sakhare, learned Senior Advocate for Appellant; Mr. Saraf, learned Senior Advocate for Respondent No.4 and Mr. Kamat, learned Senior Advocate for Respondent No.5 (Developer).

2. On 04.03.2026, after hearing Mr. Sakhare, learned Senior Advocate, the following order was passed:-

“1. Not on Board. Mentioned by way of filing praecipe dated 04.03.2026. Perused the praecipe.

2. Heard Mr. Sakhare, learned Senior Advocate for Appellant.

3. At the outset Mr. Sakhare would submit that Appellant who is Plaintiff in the Trial Court be permitted to implead Developer as party in the present Appeal from Order. In view of exigency mentioned by Mr. Sakhare and the facts of the present case, I am inclined to allow impleadment of Developer in Interim Application and Appeal from Order. Necessary amendment is permitted to be carried out within a period one week from today. Reverification stands dispensed with.

4. The only grievance of Plaintiff who is occupant of flat No.601 in the subject building of Defendant No.4 – Society is that in view of C-1 category report given by Society at behest of Developer, the occupants of building will not be entitled to transit rent as also additional area. According to Plaintiff, building is in repairable state of affairs which is justified by atleast in five C-2B reports to which reference has been invited by Mr. Sakhare and same having been considered while passing impugned order.

5. Mr. Sakhare makes a point that C-1 category Report has been given by Society within a period of three days after entering into the development Agreement on 05.05.2025. He would submit that said Report has been given at the behest of the Developer to deny the legitimate rights of the members and their entitlement to transit rent and additional area. He would submit that the development Agreement has been entered into by the Society without following the due process of law by calling for an appropriate General Body Meeting of the Society.

6. He would submit that only anxiety expressed by the member of the Society is that in such a scenario occupants will not be entitled to transit rent and additional area as per development Agreement which has been executed on 21.06.2024. He would also submit that since C-1 category is accepted it would also deprive occupants like Plaintiff and other members of the Society of PAAA.

7. Having perused the impugned order and the fact that there were five reports of C-2B category in respect of Society's building which when juxtaposed with the report given by the Society and TAC, an arguable case has been made out by Mr. Sakhare for grant of relief in terms of prayer clause (c) of the Interim Application. Undoubtedly the Society will be heard by

the Court.

8. *Mr. Sakhare would submit that Plaintiff is residing in the property and therefore grave apprehension is expressed that in view of the order passed by the learned Trial Court essential supplies of the building will be disconnected.*

9. *In that view of the matter, I propose to hear the Defendants / Society. In view of above, there shall be ad-interim relief in terms of prayer clause (c) of the Interim Application which reads thus:-*

“c. That pending the hearing and final disposal of the present Appeal from Order, the Respondents, their servants, agents, employees or any person claiming through them be restrained by an order of injunction of this Hon’ble Court from disconnecting the water connection and electricity as well as from demolishing the suit building or dispossessing the Applicant and members in respect of the building known as Homestead Cooperative Society Ltd., situated at Final Plot No. 703, T.P.S. III (Mahim), Balamiya Lane, Mahim, Mumbai 400 016 in any manner.”

10. *Hence, issue notice to Respondents.*

11. *Humdast permitted. In addition to Court’s notice, Appellant /Applicant is directed to serve the Respondents a copy of this order, Interim Application and Appeal from Order and inform about the next date of hearing by any permissible mode of service and file appropriate affidavit of service with tangible proof thereof.*

12. *Respondents shall filed Affidavit-in-Reply within a period of two weeks from today. Affidavit-in-Rejoinder, if any to be filed within a period of one week thereafter.*

13. *Stand over to 26th March 2026.*

14. *Praecipe is disposed.”*

3. Thereafter on 26.03.2026, the following order was passed:-

“1. Not on Board. Mentioned. Perused the order dated 04.03.2026.

2. Heard Mr. Saraf, learned Senior Advocate for Respondent No.4 and Mr. Kamat, learned Senior Advocate for Respondent No.5.

3. The facts in the present case as pointed out by Dr. Saraf and Mr. Kamat are extremely gross. What is pointed out is completely contrary to what was submitted by Mr. Sakhare,

learned Senior Advocate when order dated 04.03.2026 was passed. Appellant is the only person who has not vacated and is obstructing development. Further Appellant is also not in occupation of the said premises.

4. I am informed that there is dispute with respect to entitlement of Appellant's flat in the development which is in question in the Civil Court. Dr. Saraf's above contention are duly endorsed by Mr. Kamat.

5. Be that as it may, Appeal from Order is also not served till today on the Society. Appellant should come clean before the Court in such type of matters. Developer has received the copy of Appeal from Order only last night. Copy of Appeal from Order shall be served on the Society forthwith by Appellant's Advocate.

6. I propose to dispose the present Appeal from Order on next date after hearing Appellant which shall be noted by Appellant in the facts and circumstances of the present case. Appellant is directed to remain present on the next adjourned date.

*7. I am informed that Appeal from Order is listed on 26.03.2026 at serial No.100. List the Appeal from Order on **26th March 2026** on '**Supplementary Board**'."*

4. Learned Senior Advocates informed the Court that Developer has agreed to provide additional area in respect of the terrace area to the extent of 35% in addition to the flat area held by Plaintiff – Appellant in the PAAA and the redeveloped premises at par with similarly placed cases in the Society.

5. Court Receiver has complied with above order and filed Report.

6. Matter is heard today.

7. In the meanwhile, certain discussions have been taken between the Appellant – Plaintiff and the Developer with the Society also being in the picture.

8. Developer impleaded in the present matter is present before the Court duly represented by Mr. Kamat. He informs the Court that draft PAAA has already been exchanged with Plaintiff – Appellant and subject to minor corrections/discrepancies as pointed out by Plaintiff's Senior Advocate Mr. Sakhare, the said Agreement stands practically approved.

9. Needless to state that the additional area which has been agreed upon by the Developer to the extent of 35% of the terrace area shall be included in the draft PAAA in accordance with law and Plaintiff – Appellant will be entitled to the benefit thereof also.

10. Mr. Kamat persuades the Court to pass appropriate orders in handing over the suit flat to Developer after taking appropriate measurement of the terrace area.

11. In view of the above, by consent of parties, it is directed that the Court Receiver shall visit the subject suit flat for measurement of the terrace area on 07.04.2026 tomorrow at 12:00 noon. Developer shall keep his licensed architect available tomorrow to measure the extent of the terrace area and the flat area in presence of Appellant – Plaintiff and Society representative and accordingly apprise the same to the Court Receiver who shall make a Report of the measurement.

12. The Court Receiver shall prepare a Report in compliance of this order and accordingly file the said Report in Court for compliance

and give the copy of the said Report to all the parties concerned within one week. Once the measurement is done tomorrow, by 03:00 p.m. the Court Receiver is directed to hand over possession of the subject flat and terrace area to the newly impleaded Respondent No.5 – Developer and append the receipt of possession to the Report.

13. Any goods / inventory of Plaintiff – Appellant which are lying in the subject suit flat are directed to be removed tomorrow itself by Appellant which he shall do. Since Appellant is handing over possession of suit flat, he will be entitled to payment of transit rent as decided between parties.

14. The aforesaid order is subject to any order that will be passed in the pending Suit No.1775 of 2021 which is filed against the predecessor-in-title of the Plaintiff – Appellant by third parties in the Civil Court regarding the suit flat.

15. Needless to state that in view of the aforesaid directions and orders passed by the Court as also the directions contained in the previous orders which are delineated herein above, Plaintiff – Appellant shall indemnify the Developer and the Society that in the event of any claim by any of the third parties is made he shall be responsible for meeting the same. Necessary clauses with respect to the indemnity by Plaintiff – Appellant have been incorporated in the PAAA as informed by Mr. Kamat.

16. Needless to state that PAAA is directed to be executed by the Developer in favour of Plaintiff – Appellant because the Court Receiver has filed the Report pursuant to the previous orders passed by the Court of having found Plaintiff – Appellant in possession of the subject suit flat.

17. In view of the above, Appeal From Order is disposed.

18. The Suit pending before the learned Trial Court shall be withdrawn by Plaintiff – Appellant on the basis of a server copy of this order. Learned Trial Court shall allow to do so.

19. Costs of the Court Receiver’s Report shall be paid by the Developer in accordance with law.

20. In view of the above order and disposal of Appeal From Order, pending Interim Application (St.) No.6001 of 2026 and Interim Application (St.) No.9032 of 2026 are accordingly disposed.

21. In view of the above order, pending Court Receiver’s Report No.8 of 2026 is accordingly disposed on due compliance.

[MILIND N. JADHAV, J.]

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