

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**INTERIM APPLICATION NO. 1045 of 2024
IN
SUIT NO.99 OF 2024**

Hukumchand Kushalraj Kothari .. Applicant

In the matter between

Ashok Kushalraj Kothari .. Plaintiff

Versus

Narendra Kushalraj Kothari & Ors. .. Defendants

And

Mumbai Metro Rail Corporation Ltd. .. Non Party
Respondent

Mr. Mutahhar Khan a/w Mr. Vishal Mehta i/by M/s. MV Law Partners, Advocate for Plaintiff

Mr. Adil Parsurampuriah i/by M/s.Parinam Law Associates, Advocate for Defendant No. 1.

Mr. Sarosh E. Bharucha a/w Mr. Hrushi Narvekar, Mr. Dhvani Desai i/by M/s.DM Law Chambers, Advocate for Applicant in IA/1045/2024 and Defendant No. 2

Mr. Kunal R. Kumbhat i/by Ms.Sunanda R. Kumbhat, Advocate for Defendant No. 3(a) to 3 (c)

Mr. Shyamali Gadre a/w Ms. Mrunal Tavade i/by M/s.Little and Co. Advocate for Party Respondent -MMRCL

CORAM: FIRDOSH P. POONTIWALLA, J.
RESERVED ON: NOVEMBER 24, 2025
PRONOUNCED ON: JUNE 09, 2026

JUDGEMENT:

1. This Interim Application has been filed by Defendant No.2 seeking the following relief:

“(a) That this Hon'ble Court be pleased to direct the Non-Party Respondent to forthwith release all arrears (Exhibit (Exhib N) and future amounts of compensation in lieu of Transit Accommodation under the Agreement for Permanent Alternate Accommodation dated 14th August, 2018 to the Applicant, with interest @ 18% per annum from the date the same fell due.”

FACTS

2. The facts as pleaded by Defendant No.2 in the Interim Application are as follows:

a. In and around 2018, the Mumbai Metro Rail Corporation Limited (“MMRCL”), the Non-Party Respondent herein, was undertaking execution of the Colaba-Bandra-Seepz Metro Line 3 Project in South Mumbai and had initiated the process of acquisition of properties which came in the way of, and were affected by, the project.

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b. One of the properties so affected was a structure known as "Surya Mahal" bearing No.276/B standing on CS No. 1 of Girgaon Division at JSS Road, Mumbai 400 004 (hereinafter referred to as "**Surya Mahal**").

c. On 14th August 2018, a Provisional Agreement for Permanent Alternate Accommodation (hereinafter referred to as "**PAAA**") came to be executed by and between MMRCL and Defendant No.2, on behalf of a company known as Model Sales Agency Pvt. Ltd., in respect of Shop/Room No. 3 admeasuring 273.20 Sq. Ft. ("hereafter referred to as "**Shop No.3**") on the ground floor of Surya Mahal whereby Defendant No.2 agreed to vacate and handover possession of Shop No.3 to MMRCL.

d. By the said PAAA, MMRCL had agreed to provide permanent alternate accommodation in the block known as "G3" to be constructed by MMRCL in the vicinity in lieu of Defendant No.2 handing over possession of Shop No.3 to MMRCL on such terms as stipulated in the PAAA. Further, as per clause 8(B) of the PAAA, MMRCL agreed to provide compensation in lieu of Transit Accommodation to Defendant No.2 at the rate of

Rs.47,300/- per month, in advance for 11 months from the time Defendant No.2 handed over possession of Shop No.3 until he was put in possession of the permanent alternate accommodation. The above rate was agreed to be increased by an amount of 10% per year till possession of the permanent alternate accommodation was handed over to Defendant No.2. It was also agreed that 10% would be levied on the amount increased every year by 10% and not on the basic and original amount of the rent.

e. MBRRB, Mumbai, had issued a No Objection Certificate dated 8th October, 2018 to MMRCL. In the No Objection Certificate, it has been recorded that, the Project of Metro line 3 being a vital Project of the government, no objection was granted for the redevelopment of Surya Mahal along with other buildings on such terms as mentioned therein. MBRRB also submitted a List of certified tenants along with the No Objection Certificate to MMRCL. As per the list of existing tenants submitted by MBRRB, against Shop No.3 is shown as 'Model Sales Agency Pvt Ltd.' ("Hukumchand Kushalraj Kothari"). Further, Surya Mahal, being a cessed building, the Maharashtra Housing and Area Development Authority ("**MHADA**") carried out its inspection

and issued its certified list of Tenants of Surya Mahal wherein the name of the Defendant No.2 was certified against Shop No.3.

f. On 14th August 2018, MMRCL took possession of Shop No.3 from Defendant No.2 and in and around 2018/2019, demolished the same.

g. MMRCL then started paying compensation in lieu of Transit Accommodation to Defendant No.2 on a year on year basis. As per the PAAA, MMRCL was required to pay advance compensation for 11 months period. MMRCL paid compensation to Defendant No.2 on 19th September 2018, 16th July 2019, 1st October 2020, 7th October 2021 and lastly a sum of Rs.8,72,574/-, for the period 2022 to 2023, on 13th October 2022.

h. It is the case of Defendant No.2 that the Plaintiff had been aware of the fact of demolition of Surya Mahal, execution of the said PAAA and payment of compensation to Defendant No.2 all throughout. The Plaintiff had also entered into a similar PAAA dated 17th November 2018 with MMRCL in respect of Unit No.4B

in a neighbouring building named as "Taramahal" ("Taramahal Unit") for the purposes of the said Project, on similar terms.

i. The Plaintiff filed the present Suit on 10th April, 2023 seeking administration of the estate of late Kushalraj Jugraj Kothari and late Mohiniben Kushalraj Kothari i.e. the deceased father and the deceased mother of the Plaintiff and Defendant No.2.

j. After the filing of the present Suit, the Plaintiff addressed letters to MMRCL, including on 10th April 2023 and 3rd May 2023, calling upon MMRCL to stop paying compensation in lieu of Transit Accommodation under the PAAA to Defendant No.2.

l. On account of the above letters from the Plaintiff, MMRCL addressed a letter dated 22nd September 2023 to Defendant No.2 calling upon Defendant No.2 to provide necessary clarification.

m. Further, MMRCL stopped paying the advance rent to Defendant No.2 with respect to Shop No.3 at Surya Mahal for the period 2023 to 2024 in October 2023.

n. Model Sales Agency Pvt. Ltd. issued a Reply dated 27th September 2023 to MMRCL clarifying all facts and stating that the Board Resolution produced by the Plaintiff showing that the compensation in respect of Shop No.3 at Surya Mahal should be paid to him was a bogus and sham document and called upon MMRCL to continue paying compensation to Defendant No.2.

o. Further, on 29th September 2023, Defendant No.1 also addressed a letter to MMRCL and informed MMRCL that Defendant No.1, being a 95% shareholder of Model Sales Agency Pvt. Ltd., confirmed that the MMRCL may continue paying compensation under the said PAAA to Defendant No.2

p. Thereafter, the Plaintiff, through its Advocates, issued a letter dated 27th September 2023 to MMRCL informing MMRCL that he had filed a litigation against the Defendants in this Court, which was pending, and as such MMRCL ought not to issue compensation cheques to Defendant No.2.

q. Pursuant thereto, MMRCL addressed a letter dated 1st January 2024 to Defendant No.2 informing him that as parties had approached this Court, MMRCL would not be able to release

compensation which fell due on 1st October 2023 till further Orders from this Court.

r. It is in these circumstances that Defendant No.2 has filed the present Interim Application.

SUBMISSIONS OF THE PARTIES

3. The Plaintiff filed an Affidavit in Reply dated 13th June 2024. Defendant No.2 filed an Affidavit in Rejoinder dated 19th July 2024. Further, the Plaintiff also filed an Affidavit dated 28th June 2025. MMRCL also filed an Affidavit in Reply dated 12th June 2025.

4. Mr. Sarosh E. Bharucha, the learned counsel appearing on behalf of Defendant No.2, made submissions in support of the Interim Application. Mr.Bharucha stated that the family company, Model Sales Agency Pvt. Ltd., was the tenant of Shop No.3 in Surya Mahal. He further pointed out that Defendant No.1 is a 95% shareholder of the said Company and the Plaintiff, Defendant No.2 and Defendant No.3 were minority shareholders.

5. Mr. Bharucha stated that Shop No.3 and Surya Mahal were demolished on account of the Metro project. Mr. Bharucha referred to a Resolution passed by the Board of Directors of Model Sales Agency Pvt. Ltd., which is found at page 131 of the Plaint. Mr. Bharucha stated that, although the said Resolution mentioned the date of the meeting as 5th April 2018, the meeting was actually held on 25th April 2018.

6. Mr. Bharucha pointed out that, by the said Resolution, Defendant No.2 was authorised to execute all agreements of permanent alternate accommodation, affidavit, declaration, indemnity bond and any such documents and deed pertaining to Shop No.3 at Surya Mahal and that it was agreed that the cheques would be issued by MMRCL in the name of Defendant No.2. The said Resolution was certified as a true copy on 28th April 2018 by Defendant No.1, Narendra Kushalraj Kothari.

7. Mr. Bharucha submitted that the Plaintiff and Defendant No.3 were also shareholders of the Company at the time of the passing of the aforesaid Resolution.

8. Mr. Bharucha then drew my attention to the PAAA at page 16 of the Interim Application and pointed out that Clause 5 at page 21 showed that all four brothers i.e. Narendra Kushalraj Kothari (Defendant No.1),

Hukumchand Kushalraj Kothari (Defendant No.2), Ravindra Kushalraj Kothari (Defendant No.3) and Ashok Kushalraj Kothari (Plaintiff) were residing in the said premises.

9. Mr. Bharucha also drew my attention to the provisions of the said PAAA regarding payment of compensation in lieu of transit accommodation. Further, Mr.Bharucha pointed out that the said PAAA was signed on behalf of the Model Sales Agency Pvt. Ltd. by Defendant No.2.

10. Mr. Bharucha drew my attention to the NOC dated 8th October 2018 granted by MBRRB, Mumbai to MMRCL. Mr.Bharucha also drew my attention to the list of certified tenants and submitted that the tenancy in respect of Shop No.3 is shown in the name of Model Sales Agency Pvt. Ltd. ("Hukumchand Kushalraj Kothari") i.e. Defendant No.2. Mr.Bharucha also submitted that the Pan Card of Defendant No.2 was also produced.

11. Next, Mr. Bharucha drew my attention to the possession receipt at page 50 of the Interim Application. Mr.Bharucha pointed out that the possession of Shop No.3 was given to MMRCL by Defendant No.2 and that the name of the tenant was shown as Model Sales Agency Pvt. Ltd., through its authorised signatory Hukumchand Kushalraj Kothari, i.e. Defendant No.2.

12. Mr. Bharucha further submitted that from 2018 to 2022, MMRCL has paid compensation in lieu of transit accommodation to Defendant No.2.

13. Mr. Bharucha referred to the letter dated 21st April 2022 addressed by the Plaintiff to MMRCL seeking a copy of the PAAA and to the letter dated 26th April 2022 of MMRCL providing a copy of the PAAA to the Plaintiff. Mr. Bharucha next pointed out that the Plaintiff filed the present Suit for administration of the estate of the deceased parents and for partition on 10th April 2023.

14. Further, Mr. Bharucha referred to a letter dated 10th April 2023 addressed by Plaintiff's Advocate to MMRCL calling upon them to stop paying compensation in lieu of transit accommodation to Defendant No.2 and to pay the same to the Plaintiff. Mr. Bharucha pointed out that with the said letter, the Plaintiff attached a copy of the Resolution passed by the Board of Directors of Model Sales Agency Pvt. Ltd. at meeting held on 14th March 2023 whereby it was resolved that cheques to be issued by MMRCL with regard to temporary alternate accommodation, if any, were to be directly issued in the name of the Plaintiff.

15. Mr. Bharucha submitted that the said Resolution is a fabricated document and, in any case, has been superseded by subsequent Resolutions.
16. Mr. Bharucha then referred to the Order dated 20th April 2023 passed by this Court in Interim Application (L) No.9946 of 2023 in the present Suit. In particular, Mr. Bharucha drew my attention to paragraph 3 of the said Order which stated that “*In the meanwhile, statusquo in respect of the properties controlled by the parties be maintained*”.
17. Mr. Bharucha submitted that the letters addressed by the Plaintiff subsequent to this Order were in breach of this Order as they sought to change the status quo.
18. In this context, Mr. Bharucha referred to a letter dated 3rd May 2023 addressed by the Plaintiff to MMRCL calling upon MMRCL to stop making payments to Defendant No.2.
19. Further, Mr. Bharucha submitted that, as a result of letters addressed by the Plaintiff to MMRCL, by a letter dated 22nd September 2023 addressed by MMRCL to the Defendant No.2, MMRCL informed Defendant No.2 that in light of the complaint filed by the Plaintiff, MMRCL would withhold payment of compensation to Defendant No.2. Mr. Bharucha also

referred to a letter dated 22nd September 2023 by which Defendant No.2 gave a detailed explanation to MMRCL stating as to why Defendant No.2 was entitled to payment of the compensation in lieu of transit accommodation.

20. Further, Mr. Bharucha referred to a letter dated 27th September 2023 addressed by the Plaintiff to MMRCL again seeking change of status quo and calling upon MMRCL not to pay compensation in lieu of transit accommodation to Defendant No.2. Mr. Bharucha submitted that pursuant to the said letter, MMRCL addressed a letter dated 1st January 2024 to Defendant No.2 stating that it would not pay compensation in lieu of transit accommodation to Defendant No.2 until Defendant No.2 obtained necessary orders from the Court in that regard.

21. Mr. Bharucha also pointed out that by a letter dated 22nd September 2023 addressed to MMRCL, Defendant No.1, who was a 95% shareholder of Model Sales Agency Pvt. Ltd., confirmed the minutes dated 25th April 2018 and requested MMRCL to pay the compensation in lieu of transit accommodation to Defendant No.2.

22. Mr. Bharucha submitted that the Plaintiff was always aware of the Resolution dated 25th April 2018. Further, Mr. Bharucha submitted that Defendant No.2 received rent from MMRCL from 2018 to 2022, when no

objection was taken by the Plaintiff. This was despite MMRCL providing to the Plaintiff the PAAA on 26th April 2022.

23. As far as the Resolutions were concerned, Mr. Bharucha submitted that the Plaintiff had not taken any steps to challenge the Resolutions and, therefore, the argument of the Plaintiff in respect of the Resolutions cannot be accepted.

24. Lastly, Mr. Bharucha submitted that the Plaintiff had acted in violation of the Order of status quo passed by this Court by its Order dated 20th April 2023.

25. Mr. Bharucha submitted that, for all the aforesaid reasons, this Court be pleased to allow the Interim Application.

26. Mr. Mutahhar Khan, the learned counsel appearing on behalf of the Plaintiff, opposed the granting of any reliefs in the Interim Application.

27. Mr. Khan submitted that, although Defendant No.2 had alleged that the Resolution dated 5th April 2018 at page 131 of the Plaint was actually a Resolution of 25th April 2018, the same was not clarified by the Affidavit in Reply of the Defendants in another Interim Application filed in this Suit.

28. Mr. Khan then referred to page 264 of the Affidavit in Rejoinder and submitted that the Resolution dated 25th April 2018 which was found at page 264 was different from the Resolution at page 131 of the Plaint. Further, Mr. Khan submitted that the Resolution dated 5th April 2018 at page 265 of the Rejoinder was the same as the Resolution at page 131 of the Plaint.

29. Mr. Khan submitted that the said Resolution dated 5th April 2018 at page 131 of the Plaint was certified as a true copy by Defendant No.1 as a Director of the Company when Defendant No.1 had, by that time, ceased to be a Director of the Company. Mr. Khan submitted that this showed that the said Resolution was a fabricated one. Further, Mr. Khan submitted that there was no explanation in the Interim Application in respect of the two Resolutions dated 25th April 2018 and 5th April 2018.

30. Next, Mr. Khan referred to clause 5 of the PAAA and pointed out that the same showed that the possession in respect of Shop No.3 was joint of all the brothers.

31. Mr. Khan submitted that it was wrong to suggest that the certified list of tenants showed Defendant No.2 as a tenant. He submitted

that the certified list showed the Company Model Sales Agency Pvt. Ltd. as a tenant. He submitted that the possession of Shop No.3 was of the Company.

32. Further, Mr. Khan referred to the Additional Affidavit dated 20th June 2025 filed by the Plaintiff. Mr. Khan referred to various paragraphs of that Affidavit to show that the flat of the Plaintiff had been mortgaged to pay the dues of the Company. He also drew my attention to the Order dated 3rd July 2024 passed by this Court in Writ Petition No.2794 of 2024 filed by him which is at page 323 and 324 of the Additional Affidavit and also the Minutes of the Order at page 325 to 332 of the Additional Affidavit.

33. Mr. Khan submitted that it is not in dispute that the Company Model Sales Agency Pvt. Ltd. was a tenant in respect of Shop No.3 in Surya Mahal.

34. Mr. Khan submitted that what is in dispute is the fact as to who is in exclusive possession of Shop No.3. In this context, Mr. Khan submitted that the PAAA showed that all four brothers were in possession of Shop No.3. Further, Mr. Khan submitted that Defendant No.1 was not a Director on 5th April 2018 or on 25th April 2018, and, therefore, he could not have issued a certified copy of a Resolution as a Director of the Company. Further, Mr. Khan submitted that, since the Company Model Sales Agency Pvt. Ltd. has

liabilities, the compensation in lieu of transit accommodation should be deposited in Court.

35. Mr. Khan submitted that the status quo Order dated 20th April 2023 did not affect the actions of the Plaintiff and that the actions of the Plaintiff were not in breach of the said Order. Further, Mr. Khan submitted that the Resolutions relied upon by Defendant No.2 are void on the face of these Resolutions and, therefore, there was no need to challenge the same.

36. Mr. Adil Parsurampururia, the learned counsel appearing on behalf of Defendant No.1, submitted that it was important to note that Shop No.3 was not a part of the schedule of properties annexed to the present Suit. Further, Mr. Parsurampururia also submitted that, by his actions, the Plaintiff had committed a breach of the status quo Order passed by this Court by its Order dated 20th April 2023.

37. Mr. Parsurampururia, therefore, submitted that the present Interim Application ought to be allowed.

38. Ms. Shyamali Gadre, the learned counsel appearing on behalf of MMRCL, submitted that MMRCL was ready to pay/deposit the amount of compensation as per the orders passed by this Court.

39. In Rejoinder, Mr. Bharucha submitted that the Plaintiff was required to challenge the Resolutions relied upon by Defendant No.2 and, in the absence of such a challenge, the Plaintiff cannot make submissions in respect of the said Resolutions. Further, Mr. Bharucha submitted that the Plaintiff had lost sight of the fact that Defendant No.2 had approached this Court in the present Interim Application on the ground that Defendant No.2 was in occupation of Shop No.3. Mr. Bharucha submitted that, on this ground itself, the present Interim Application ought to be allowed.

40. Mr. Bharucha further submitted that the actions of the Plaintiff tantamount to a breach of the status quo Order passed by this Court by its Order dated 20th April 2023.

ANALYSIS AND FINDINGS

41. The question before me is whether MMRCL should be directed to release the arrears and further amounts of compensation in lieu of transit accommodation under the PAAA to Defendant No.2.

42. In the context of this question, it is important to note that the PAAA dated 14th August 2018 was executed between MMRCL and Defendant No.2 acting on behalf of Model Sales Agency Pvt. Ltd.

43. Further, the list of tenants prepared by MHADA also shows the name of Model Sales Agency Pvt. Ltd. and the name of Defendant No.2 against the said Shop No.3 in Surya Mahal. The possession receipt at page 50 of the Interim Application refers to the name of the tenant as Model Sales Agency Pvt. Ltd. through its authorised signatory Hukumchand Kushalraj Kothari i.e. Defendant No.2. It is also important to note that the possession of Shop No.3 was given by Defendant No.2 to MMRCL which clearly shows that the possession was with Defendant No.2.

44. Further, MMRCL paid compensation in lieu of transit accommodation to Defendant No.2 from 2018 till October 2022. MMRCL paid compensation in lieu of transit accommodation to Defendant No.2 on 19th September 2018, 16th July 2019, 1st October 2020, 7th October 2021 and for the period 2022-23 on 13th October 2022.

45. In the light of the aforesaid, it is difficult to believe that the Plaintiff was not aware of the fact of the demolition of Surya Mahal, execution of the PAAA and payment of compensation in lieu of transit accommodation to Defendant No.2. Despite being aware of the same, the Plaintiff did not take any action in respect thereof.

46. Further, by, a letter dated 26th April 2022, MMRCL provided to the Plaintiff the PAAA. The Plaintiff filed the present Suit on 10th April 2023, and despite having been provided the PAAA, did not include in the Schedule of the properties annexed to the Plaintiff Shop No.3 in Surya Mahal.

47. Further, by the Order dated 20th April 2023 passed by this Court in Interim Application (L) No.9946 of 2023 in the present Suit, this Court directed that “*In the meanwhile, status quo in respect of the properties controlled by the parties be maintained.*”

48. Despite the aforesaid, the Plaintiff addressed letters commencing from 10th April 2023 onwards to MMRCL calling upon them to stop paying compensation in lieu of transit accommodation to Defendant No.2.

49. In my view, all the aforesaid clearly shows that, having first acquiesced in compensation in lieu of transit accommodation being paid to Defendant No.2, the Plaintiff, by way of an after thought, and in order to wrongly claim a share in the said compensation, raised objections against paying compensation to Defendant No.2 by MMRCL.

50. It is the case of the Plaintiff that Resolution dated 5th April 2018 (which, according to Defendant No.2, is dated 25th April 2018, and the date 5th April 2018 is a typographical error) is a fabricated document. The Plaintiff so contends as a certified copy is signed by Defendant No.1 as a Director of Model Sales Agency Pvt. Ltd. when he was no longer a Director at that time. The second reason given by the Plaintiff for the said Resolution to be fabricated is that the said Resolution at page 131 of the Plaint, if it is to be considered as a Resolution dated 25th April 2018, as contended by Defendant No.2, then there was another Resolution dated 25th April 2018 at page 264 of the Affidavit in Rejoinder.

51. As far as the first reason given by the Plaintiff is concerned, it is explained by Defendant No.2 that Defendant No.1 had signed the said Resolution as a authorised signatory of Model Sales Agency Pvt. Ltd., of which he was a 95% shareholder.

52. Further, the Plaintiff failed to appreciate that, as contended by Defendant No.2 in his Affidavit in Rejoinder, at the Board meeting held on 25th April 2018, certain Resolutions were passed in respect of Model Sales Agency Pvt. Ltd. By the first Resolution dated 25th April 2018, which is at page 264 of the Affidavit in Rejoinder, the Defendant No.1 was authorised to execute all kinds of agreements, affidavit, declaration, indemnity bond and

any such documents and deed pertaining to Shop No.3 at Surya Mahal and in the said Resolution it was also further resolved that any cheque issued by MMRCL shall be issued in favour of Defendant No.2. Further, on 25th April 2018, a second Resolution was passed. A certified copy of which is at page 131 of the Plaint. The said Resolution authorises Defendant No.2 to execute all agreements of permanent alternate accommodation, affidavit, declaration, indemnity bond and any such documents and deed pertaining to Shop No.3 at Surya Mahal. The said Resolution also provides that the cheques will be issued by MMRCL in favour of Defendant No.2. Pursuant to being a authorised signatory of Model Sales Agency Pvt. Ltd., Defendant No.1 certified the Resolution produced at page 131 as a certified true copy on 28th April 2018.

53. In my view, the explanation given by Defendant No.2 in the Affidavit in Rejoinder *prima facie* shows that there is no fabrication of the Resolutions. Further, as per the said Resolution dated 25th April 2018, at page 131 of the Plaint (wrongly dated as 5th April 2018), it is Defendant No.2 who is entitled to receive compensation in lieu of transit accommodation from MMRCL. Defendant No.2 has been authorised to do so on behalf of the Company Model Sales Agency Pvt. Ltd.

54. Further, in any case, the Plaintiff has not challenged the said Resolutions and, therefore, it is not open for the Plaintiff to assert that the said Resolutions are fabricated.

55. Further, the Resolution dated 14th March 2023, at page 85 of the Interim Application, resolves that the Plaintiff is authorised to execute all agreements of permanent alternate accommodation, affidavit, declaration, indemnity bond and any such documents and deed pertaining to Shop No.3 at Surya Mahal and that the cheques be issued by MMRCL with regard to the temporary alternate accommodation should be issued to the Plaintiff.

56. It is the case of Defendant No.2 that the said Resolution is fabricated as it has only been signed by the Plaintiff as a Director. In any case, even if the said Resolution is not fabricated, the same would stand superseded by the subsequent Resolution dated 25th April 2018. Therefore, the Resolution dated 14th March 2023 does not carry the case of the Plaintiff any further.

57. Further, by a letter dated 29th September 2023 addressed to MMRCL, Defendant No.1, who is a 95% shareholder of Model Sales Agency Pvt. Ltd., has confirmed and approved the minutes passed in the meeting dated 25th April 2018 in respect of Shop No.3 at Surya Mahal and has

requested MMRCL to release the compensation to Defendant No.2 at the earliest. This also shows that Defendant No.2 is entitled to receive the compensation in lieu of transit accommodation from MMRCL.

58. For all the aforesaid reasons, in my view, MMRCL should be directed to pay to Defendant No.2 compensation in lieu of transit accommodation in respect of Shop No.3 at Surya Mahal.

59. I will now deal with certain submissions made by Mr.Khan on behalf of the Plaintiff.

60. Mr. Khan referred to Clause 5 of the PAAA and submitted that the same showed that all the four brothers had joint possession of Shop No.3 in Surya Mahal. I am unable to accept this submission of Mr. Khan in light of the fact that the PAAA is executed by Defendant No.2 on behalf of Model Sales Agency Pvt. Ltd. Further, the list of tenants certified by MHADA shows only the name of Defendant No.2 against the name of the Company as a tenant of Shop No.3 at Surya Mahal. Moreover, the possession receipt dated 14th August 2018 shows that the possession of Shop No.3 at Surya Mahal was handed over to MMRCL by Defendant No.2. In my view, all these facts clearly show that Defendant No.2 was in possession of Shop No.3 at Surya Mahal and all four brothers were not in joint possession.

61. Next, Mr. Khan has submitted that the certified list of tenants mentions the name of Model Sales Agency Pvt. Ltd. as a tenant and this clearly shows that Defendant No.2 is not exclusively entitled to compensation in lieu of transit accommodation. Again, I am unable to accept this submission of Mr. Khan. Although the list of certified tenants of MHADA shows the name of Model Sales Agency Pvt. Ltd., it also shows the name of Defendant No.2. Importantly, it does not show the name of any other person. This clearly shows that Defendant No.2 was in possession of Shop No.3 at Surya Mahal.

62. Further, Mr. Khan has submitted that since Model Sales Agency Pvt. Ltd. has a liability, the compensation in lieu of transit accommodation should be deposited in Court. In my view, for all the aforesaid reasons, including the reason that Defendant No.2 was in possession of Shop No.3 at Surya Mahal and gave the said possession to MMRCL, Defendant No.2 is entitled to receive the compensation in lieu of transit accommodation from MMRCL. Further, Model Sales Agency Pvt. Ltd. can be protected by making the said direction subject to the final decision in the Suit and also by directing Defendant No.2 to give an undertaking to this Court to return the amounts obtained from MMRCL pursuant to the Order of this Court, if so ordered by

this Court. That would sufficiently protect the interests of Model Sales Agency Pvt. Ltd.

63. Further, Mr. Khan has argued that the status quo Order does not affect the actions of the Plaintiff. By the Order dated 20th April 2023, this Court had directed that status quo in respect of properties controlled by the parties shall be maintained. This clearly shows that as far as Shop No.3 in Surya Mahal was concerned, Defendant No.2, who was receiving the compensation in lieu of transit accommodation in respect thereof, should continue receiving the same. Therefore, in these circumstances, in my view, the actions of the Plaintiff are contrary to the letter and spirit of the status quo Order passed by this Court by its Order dated 28th April 2023.

64. Mr. Khan has finally submitted that the Resolutions relied upon by Defendant No.2 are void on the face of those Resolutions and therefore there was no need to challenge those Resolutions. I am afraid I am unable to accept the said argument. Firstly, I have held that, prima facie, these Resolutions are genuine. In any case, if the Plaintiff is desirous of disputing the said Resolutions then the Plaintiff ought to have challenged the same. Not having challenged the same, it is not open for the Plaintiff to dispute the said Resolutions.

65. As far as the relief sought by the Defendant No.2 is concerned, Defendant No.2 has also sought interest at the rate of 18% p.a. from the date the amount fell due. In my view, MMRCL cannot be saddled with interest as MMRCL stopped payment in light of disputes between the Plaintiff and Defendant No.2. Hence, I am not inclined to grant any interest as sought for.

ORDER

66. In the light of the aforesaid discussions, and for the aforesaid reasons, the following Orders are passed:

- a. MMRCL is directed to pay to Defendant No.2 all arrears of compensation in lieu of transit accommodation and also whatever other compensation in lieu of transit accommodation that has become due under the PAAA dated 14th August 2018 within a period of four weeks from the date of uploading of this Order.
- b. The aforesaid direction will be subject to the final decision in the Suit.

- c. Defendant No.2 to give an undertaking in writing to this Court to return the amounts obtained from MMRCL pursuant to this Order of this Court, if so ordered by this Court.
- d. The said undertaking be furnished within a period of two weeks from the date of uploading of this Order and MMRCL shall make payment to Defendant No.2 only on the said undertaking being furnished.
- e. Interim Application is allowed in the aforesaid terms.
- f. In the facts and circumstances of the case, there will be no Order as to costs.

[FIRDOSH P. POONIWALLA, J.]

67. At this stage, Mr.Khan, the learned counsel appearing on behalf of the Plaintiff, seeks a stay of the operation of the Order. Since the Order records that the compensation be paid by MMRCL to Defendant No.2 within a period of four weeks from the date of uploading of this Order, and on an undertaking being furnished, in my view, no stay of the operation of the order is required.

[FIRDOSH P. POONIWALLA, J.]