



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

INTERIM APPLICATION (L) NO. 5361 OF 2021  
IN  
COMM. EXECUTION APPLICATION NO. 25 OF 2022  
IN  
COMMERCIAL SUIT NO. 679 OF 2017

Raju Patel ...Applicant/Plaintiff  
Vs.  
Ajay Mody and Ors. ...Respondents/Defendants

WITH  
INTERIM APPLICATION (L) NO. 11964 OF 2022  
IN  
COMM. EXECUTION APPLICATION NO. 25 OF 2022

Chandrakant Mody and Anr. ...Applicants/  
Orig. Deft. Nos.2 & 3

In the matter between

Raju Patel ...Claimant/Plaintiff  
Vs.  
Ajay Mody and Ors. ...Respondents/Defendants

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Mr. Ashwin Shete, Mr. Abhay Dhodiwal, Mr. Ashok Pandey i/b.  
Jayakar & Partners, for the Applicant / Orig. Plaintiff.  
Mr. P. Ranjan a/w. Mr. Santosh Salekar i/b. Halai & Co., for the  
Respondent No.1.

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CORAM : MANISH PITALE, J.  
DATE : 7 JUNE 2023

P.C.

. Heard learned counsel for the applicant and the respondent No.1. There is no appearance on behalf of respondent Nos.2 and 3.

2. The learned counsel for the applicant invited attention of this Court to the orders passed in the present proceedings. It is brought to the notice of this Court that the suit filed by the applicant was decreed on 15/3/2019 in terms of prayer clauses (a),(e),(f) and (g), whereby specific directions were issued against the respondents. This included the specific direction against the respondent No.1 to pay an amount of Rs.30,63,72,360/- alongwith 18% interest per annum from the date of filing of the suit till realisation of the amount and also a direction to all the respondents to hand over vacant and peaceful possession of the property given by way of security by the said respondent i.e. Flat No.153/B, Heera Panna Building, Bhulabhai Desai Road, Mumbai – 400 026.

3. It was further brought to the notice of this Court that the respondents challenged the said decree by filing Commercial Appeal No.358/2019 and moved a notice of motion for interim reliefs. The said notice of motion was disposed of on 24/1/2020 by the Division Bench of this Court. The relevant portion of the order of the Division Bench of this Court reads as follows:

*4. Being a money decree, we stay the operation of the impugned decree in so far as prayer (f) made in the*

*plaint has been decreed. We do not stay the operation of the remaining decree.*

*5. However, the decree would not be executed for a period of 60 days from today which time we grant to the appellants to pay the decretal amount. Needless to state if the decretal amount as per decree relatable to prayer (a) is deposited in the court, the decree cannot be executed with respect to prayers (e) and (g) also which has been granted. The decretal amount deposited is permitted to be withdrawn by the respondent on furnishing security for 50% of the amount to the satisfaction of the Prothonotary and Senior Master of this court.*

*6. We clarify that in the absence of the decretal amount as per prayer (a) not being deposited, should the respondent execute the decree and in such eventuality the appellants would hand over vacant physical possession of the property referred to in prayer (f) to the plaintiff.*

*7. Needless to state that if the decree is put in the execution, such defence as may be available for the execution of the decree may be availed of by the appellants.*

*8. Notice of Motion is disposed of.*

4. It is relevant to note that this Court passed order on 6/4/2021 in Interim Application (L) No.5361/2021 granting ad-interim order in terms of prayer clauses (a) and (b) which required the respondents to disclose their movable and immovable assets, including bank accounts etc. and an injunction restraining the respondents from transferring or creating any third party rights in the properties so disclosed. It is a matter of record that respondents did not file such affidavit of disclosure. On 2/5/2023, this Court took note of the chronology of events in the present case and also the fact that respondent Nos.2 and 3 filed Interim Application No.11964/2022, seeking recall of the aforementioned order dated 6/4/2021, passed by this Court directing the respondents to file disclosure affidavit. The said application alongwith the Interim Application No.5361/2021 was directed to be listed today and a specific statement was made on behalf of the respondent No.1 that without prejudice to the rights and contentions of the said respondent, physical possession of the said flat referred to in the decree would be handed over to the plaintiff within twelve weeks of the date of the order. It is relevant to note that a period of about five weeks has already expired.

5. The learned counsel for the applicant in Interim Application No.5361/2021 i.e. decree holder was at pains to point out that despite the decree having been passed against the respondents as far back on 15/3/2019 and the respondents having

failed to deposit the amount as directed by the Division Bench of this Court while disposing of the notice of motion, the decree holder is struggling to enjoy the fruits of the decree.

6. It is pointed out that not only the respondent No.1 but respondent Nos. 2 and 3, as per the decree, are obliged to hand over peaceful possession of the said flat, particularly for the reason that they were signatories to the agreement and the flat was given as security and also because the decree specifically directs all the respondents to hand over possession of the said flat. It is submitted that the order of the Division Bench specifically clarifies that in the event respondents fail to deposit the decretal amount, the respondents would be required to hand over physical possession of the said flat. Therefore, it was submitted that, not only the respondent No.1 but the respondent Nos.2 and 3 ought to hand over physical possession of the said flat.

7. In so far as the application filed by the respondent Nos. 2 and 3 for recall of the order dated 6/4/2021 is concerned, it was submitted on behalf of the decree holder that the said application is without any merits, for the reason that the respondent Nos.2 and 3 cannot claim ignorance of the proceedings, particularly when they joined respondent No.1 in filing commercial appeal filed before this Court, which is pending. On this basis, it was submitted that the said application deserved to be dismissed.

8. The learned counsel for respondent No.1 submitted that the aforesaid application seeking recall of the order dated 6/4/2021 has been filed on behalf of respondent Nos.2 and 3 and he has nothing to submit in that regard. It is noted that there is no appearance on behalf of the respondent Nos.2 and 3 when the application is called out for hearing.

9. This Court is of the opinion that Interim Application (L) No.11964/2022 is wholly misconceived and does not deserve consideration. It is an admitted position that the order dated 6/4/2021 has not been challenged by the respondents. The respondent Nos.2 and 3 have stated in the application that being senior citizens they were not aware of the documents that were got signed from them and that therefore, they cannot be asked to file disclosure affidavit as directed as per order dated 6/4/2021. The respondent Nos. 2 and 3 appear to be creating an impression that they were unaware about the proceedings in the matter. This Court is of the opinion that the documents on record are absolutely clear. The respondent Nos. 2 and 3 have joined respondent No.1 in filing the aforesaid appeal, which is pending before the Division Bench. They were represented by counsel when the notice of motion was argued before the Division Bench and therefore, it is obvious that they cannot claim ignorance about the aforesaid proceedings and their implication.

10. As noted hereinabove, none appears on behalf of the

respondent Nos.2 and 3 to press the aforesaid application.

11. In any case, this Court is of the opinion that the said application is absolutely without merit and is wholly misconceived and accordingly Interim Application (L) No.11964/2022 is dismissed. In so far as the prayer made on behalf of the applicant in Interim Application (L) No.5361/2021, to the effect that respondent Nos.2 and 3 also need to be directed to hand over possession of the flat is concerned, this Court is of the opinion that there is indeed substance in the said contention raised on behalf of the applicant / decree holder. The decree passed by the learned Single Judge of this Court clearly directs all the respondents to hand over physical possession of the flat in question. The order dated 24/1/2020 passed by the Division Bench of this Court specifically clarifies that if the respondents failed to deposit the decretal amount, they would have to hand over physical possession of the flat. Therefore, there can be no impediment in directing the respondent Nos. 2 and 3 to hand over physical possession of the said flat. The respondent No.1 has already made statement about handing over possession of the said flat as recorded in the order dated 2/5/2023 passed by this Court. In view of the above, the respondent Nos.2 and 3 are directed to hand over physical possession of the Flat No.153/B, Heera Panna Building, Bhulabhai Desai Road, Mumbai – 400 026, alongwith respondent No.1 within the time period recorded

in the order dated 2/5/2023.

12. The respondent No.1 shall abide by the statements made in the affidavit dated 24/3/2023 filed before this Court.

13. List the matter for compliance on 8/8/2023.

**MANISH PITALE, J.**