

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.1140 OF 2022
WITH
INTERIM APPLICATION NO.30319 OF 2022
IN
APPEAL FROM ORDER NO.1140 OF 2022
AND
APPEAL FROM ORDER NO.1163 OF 2022
WITH
INTERIM APPLICATION NO.30518 OF 2022
IN
APPEAL FROM ORDER NO.1163 OF 2022**

Mrs. Shantadevi Ramdhani Yadav
Age about 48 years, Occ: Housewife
of Mumbai Indian Inhabitant
residing at Room No.304, Bldg. No.7
Satguru Apartment MHADA Colony
Chandivali Saki Vihar Road,
Sakinaka, Mumbai 400 072

...Appellant/
Applicant/
Org. Plaintiff

Versus

M/s. Pashmina Realty Pvt. Ltd.
A Company, incorporated under the
Companies Act, 1956 and having its
office at 3rd Floor, Bengal Chemical,
502, Veer Savarkar Marg, Prabhadevi,
Mumbai 400 025.

....Defendant/
Org. Defendant

Mr. S. P. Srivastava for the Appellant/Applicant/Org.Plaintiff

Mr. Yash Momaya i/b DSK Legal for the Defendant/Defendant

**CORAM : SHARMILA U. DESHMUKH, J.
RESERVED ON : JUNE 11, 2026
PRONOUNCED ON : JUNE 25, 2026**

JUDGMENT:

1. **Admit.** With consent taken up for final disposal forthwith.
2. Both these Appeals filed at the instance of original Plaintiff challenge identical order dated 24th February, 2021 passed by the Trial Court on 24th February 2021, rejecting the Appellant's seeking arrears of rent for the period from November 2011 to January 2014, and for payment of further rent from February 2014 till the Defendant provides transit accommodation and hands over possession of self-contained flat. Common submissions were advanced and both the Appeals from Order are being disposed of by this common judgment. For sake of clarity, the parties are referred to by their status before the trial court.
3. S.C Suit No 918 of 2014 and S.C Suit No 917 of 2014 were filed for specific performance of the Agreements for Permanent Alternate Accommodation dated 19th December 2009, executed by the Defendant in respect of the structures occupied by the Plaintiff, and for payment of arrears of rent.
4. The Plaintiff claims to have been in use, occupation and possession of two residential premises admeasuring 10'x30', both

situated at Gulati Compound, Sakinaka, Mumbai 400 072. The Defendant acquired development right in the subject property and approached the Plaintiff and other family members agreeing to provide two permanent alternate accommodations to the Plaintiff in lieu of two residential premises in possession of the Plaintiff. Accordingly, two unregistered Permanent Alternate Accommodation Agreements dated 19th December 2009 were executed by the Defendant with the Plaintiff, agreeing to provide two alternate accommodation admeasuring 350 square feet carpet area and agreed to pay transit rent of Rs 17,000/ per month. It was also agreed that the possession of the redeveloped premises would handed over within 24 months with extended period of 6 months failing which compensation of Rs 1,00,000/ would be paid.

5. The Defendant had issued two cheques amounting to Rs. 3,74,000/- each, being the rent for a period of 22 months, and the Plaintiff had vacated both the rooms and handed over possession to the Defendant on date of agreement. Despite issuance of notice to the Defendant seeking payment of further rent, there was non-compliance. It is further pleaded that the Plaintiff had filed S.C. Suit No. 4580 of 2010 against the Defendant for a

declaration that both the agreements are valid and subsisting and for injunction. The said suit came to be withdrawn, as no relief of specific performance was sought, and thereafter the present suit came to be filed.

6. The Plaintiff preferred an interim application seeking a direction to the Defendant to pay arrears of rent from November 2011 to January 2014, and for payment of further rent, and to hand over possession of the self-contained flat.

7. The Defendant resisted the application by setting up a case of composite arrangement entered into with the Plaintiff and her husband, under which the Defendant had paid a sum of Rs.50,00,000/- by way of ten agreements dated 19th December 2009 and 6th February 2010 for Rs.5,00,000/- each to the Plaintiff and her family members in lieu of four structures, two of which stood in the name of the Plaintiff and the other two in the name of the Plaintiff's husband. The Plaintiff has failed to comply with her obligation to hand over vacant possession of the suit premises on execution of the agreement dated 19th December 2009, and subsequently the structures were demolished by the Mumbai Municipal Corporation. In the earlier Suit No. 4580 of 2010, where a

similar relief for payment of rent was sought, ad-interim relief was refused by an order dated 25th October 2012. It was pleaded that there were several agreements entered into between the Defendant and the Plaintiff and her husband, recording a composite arrangement in respect of four structures, pursuant to which a sum of Rs.50,00,000/- was paid to the Plaintiff and her husband as monetary compensation in respect of the four structures and an additional amount of Rs.7,48,000/- was paid towards rent and despite receiving the said payments, the Plaintiff did not vacate the suit structures.

8. The Plaintiff's son, Ravi Yadav, and daughter, Manju Yadav, had filed two suits, being Suit (Lodging) Nos. 1256 of 2011 and 1257 of 2011, claiming that there were only four structures belonging to the Yadav family. In the proceedings filed by the Plaintiff's children, no ad-interim relief was granted. Neither the Plaintiff nor her family members have handed over possession of the suit premises to the Defendant and were, therefore, in breach of their obligations and not entitled to any relief. Insofar as the remaining two structures are concerned, the Plaintiff's husband had not vacated or handed over possession of the remaining two

structures. The Defendant has filed Suit No. 4697 of 2013 in this Court seeking a declaration that the composite arrangement contained in the Agreements for Permanent Alternate Accommodation, ten agreements providing for payment of an aggregate amount of compensation of Rs.50,00,000/-, and the agreement providing for payment of an amount of Rs.7,48,000/- towards rent in respect of the two residential structures standing on the same property in the name of the Plaintiff, and which were subsequently demolished, now stands frustrated, and a direction for payment of sum of Rs.25,00,000/- along with interest and a sum of Rs.3,74,000/- along with interest from the date of execution of the rental agreements/letter dated 8th February 2010.

9. In rejoinder, it is denied that there was a composite arrangement between the Defendant and the Plaintiff, under which the Defendant had paid a sum of Rs.50,00,000/- by way of ten agreements dated 19th December 2009 and 6th February 2010 for Rs.5,00,000/- each. It is stated that the Defendant, by misguiding the Plaintiff, had taken the signatures of all the family members and had paid only Rs.5,00,000/- for each structure. The possession of the suit premises was handed over after execution of

the agreement and the Defendant had demolished the same immediately thereafter. The structures belonging to the children of the Plaintiff were separate structures and the respective suits had been filed to protect their premises, but the Defendant, with the assistance of the Municipal Corporation, got those structures demolished. The Plaintiff's structures were demolished by the Defendant immediately after execution of the agreement dated 19th December 2009. The structures which were demolished by the Corporation were not the structures of the Plaintiff, as alleged by the Defendant.

10. There is a further affidavit dated 11th November 2019 filed by the Plaintiff, claiming that the Defendant had paid a sum of Rs.50,00,000/- as compensation to acquire other huts, for which separate agreements, affidavits, and Powers of Attorney were executed and ten such agreements were executed. It is contended that a writing dated 8th February 2010 was executed between the Plaintiff and the Defendant by which the Defendant paid Rs.3,74,000/- each for the two structures, and that the said writing as well as five agreements dated 19th December 2009 were sought to be produced. An additional affidavit came to be filed by the

Defendant in response to the affidavit dated 11th November 2019, opposing the production of the documents on the ground that there was no reference to the same in the suit or in the motion. It is contended that the Plaintiff had categorically denied the existence of writing dated 8th February 2010 by advocate's letter dated 1st October 2013, which is annexed to the plaint and cannot rely on the writing dated 8th February 2010. There is a further affidavit of December 2019 filed by the Plaintiff reiterating the earlier stand taken and contending that the Plaintiff is relying upon the writing dated 8th February 2010 in respect of payment of rent and not the agreement dated 8th February 2010.

11. The Trial Court, noted that the agreement tendered by the Defendant with its reply is different from the agreement on which the suit is based. It accepted that the case of Plaintiff that each agreement is different is *prima facie* convincing. It also noted that the documents filed by the Defendant shows that the demolition by the Corporation was of the structures of Ravi Yadav and Manju Yadav. Noting that substantial amounts have been paid by the Defendant to the Plaintiff, may be pertaining to other agreements, for further amounts, the Plaintiff would have to establish that she

delivered possession to the Defendant. It opined that there is no details when the possession was handed over. It held that as breach is alleged by the Defendant, no findings can be given that the claim for rent is justifiable and accordingly dismissed the application.

12. Mr. Srivastava, learned counsel appearing for the Plaintiff points out the agreement for alternate accommodation of 19th December 2009 in respect of two structures. He would further point out the writing dated 8th February 2010, executed by the Defendant itself recording that vacant possession of the existing structures was handed over and that a sum of Rs.3,74,000/- towards 22 months' rent in advance was paid, which is also endorsed by the Plaintiff. He would further submit that the Trial Court has ignored the documentary evidence produced on record, which showed the date on which possession was handed over. He would further submit that, in the additional affidavit of the Plaintiff dated 11th November 2019, there is a specific reference to the writing dated 8th February 2010, which has not been considered by the Trial Court. He submits that, as the Plaintiff had handed over possession of the structures as contemplated under the

agreement, there is no breach and the Defendant is liable to pay the arrears of the rent.

13. *Per contra*, Mr. Momaya, learned counsel appearing for the Defendant, submitted that the Plaintiff is a part of the Yadav family comprising Ramdhani-her husband, two sons, Ravi and Ashish, and daughter Manju, who collectively occupied four unauthorised structures on portion of the subject land. s He submits that the pleadings in the suits filed by Ravi and Manju acknowledge that there were only four structures with the Yadav family. He would further submit that an oral composite understanding was entered into between the Yadav family and the Defendant, under which the Yadav family agreed to surrender and hand over the original four structures to the Defendant for monetary payment of Rs.50,00,000/- paid under ten separate writings dated 19th December 2009 and 6th February 2010 of Rs. 5,00,000/ each, two permanent alternate accommodation agreements dated 19th December 2009 entered into with the Plaintiff herein and two permanent alternate accommodation agreements of 19th December 2009 entered into with the husband of the Plaintiff. He submits that under the composite agreement,

the Yadav family was to hand over peaceful possession of all the four structures, as recorded in these ten writings, but Ravi Yadav and Manju Yadav filed multiple proceedings claiming to be in possession.

14. He submits that the Defendant has paid a sum of Rs.50,00,000/- to the Yadav family and also paid a sum of Rs.7,48,000/- as transit rent for all the four original structures to the Plaintiff, at the request of the Yadav family. He would further submit that the Plaintiff has mentioned different dates in different proceedings for handing over possession. He would submit that the writing dated 8th February 2010, under which the Plaintiff claims to have handed over possession, is not referred to in the plaint and was sought to be produced only after the arguments on the Notice of Motion were concluded. He would further point out that, though the Plaintiff herein claims that the sum of Rs.7,48,000/- was payable towards two units of the Plaintiff herein, the husband of the Plaintiff had addressed a notice dated 10th October 2012 acknowledging receipt of rent previously received by him, which constitutes an admission that the sum of Rs.7,48,000/- was paid to the Plaintiff as a composite payment towards all four units.

15. He submits that, in breach of the agreement, the Yadav family has failed to hand over possession of the original four structures and has instituted series of litigations. He submits that two structures came to be demolished by the Mumbai Municipal Corporation, in furtherance of its statutory duties and that, till date, the husband of the Plaintiff has not handed over the remaining two structures. He would submit that the Defendant has filed Suit No. 4697 of 2013 seeking a declaration that the agreements stand frustrated and seeking refund of the amounts, which is pending. He would further point out that the Plaintiff seeks reliefs which are in the nature of final reliefs at the interlocutory stage. He submits that the Plaintiff has suppressed the fact that, in Suit No. 4580 of 2010, the Plaintiff claimed to be in possession even as of October 2012. He submits that the discretion exercised by the Trial Court is neither arbitrary nor perverse and does not warrant any interference. In support of his submissions, he relies upon the following decisions:

- i. State of U.P. & Ors. vs. Ram Sukhi Devi¹**
- ii. Metro Marins & Anr. vs. Bonus Watch Co.(P) Ltd. & Ors.²**

¹ (2005) 9 SCC 733

² (2004) 7 SCC 478

- iii. **Wander Ltd. & Anr. vs. Antox India P. Ltd.**³
- iv. **Vasudev Nene & Ors. vs. Dattatraya Raghunath Jog**⁴

16. Mr. Srivastava, denies any composite agreement and would point out the annexure to the Defendant's affidavit in reply, which refers to ten agreements as tenant compensation agreements, four agreements as alternate accommodation agreements, and two agreements as rent agreements. He would submit that these were independent agreements and that the Plaintiff had handed over possession of all the structures on 8th February 2010, as evidenced by the writing. He submits that the demolition of the structures by the Mumbai Municipal Corporation was in respect of the huts occupied by the children of the Plaintiff and had no nexus with the agreements entered into between the Plaintiff and the Defendant. He would further point out that, in the suit of 2012, the Plaintiff had inadvertently stated that she was in occupation and possession of two residential premises, whereas the Plaintiff had also claimed rent from January 2012, which indicates that the pleading about being in possession was an inadvertent error.

17. Rival contentions now fall for determination:

³ 1990 (Supp) SCC 727

⁴ 1999 SCC OnLine Bom 212 : (1999) 3 Bom CR 684 : 1999 AIHC 3739

18. The Plaintiff is claiming specific performance of the two Agreements for Permanent Alternate Accommodation dated 19th December, 2009 executed between the Plaintiff and the Defendant. Under the said agreements, the obligation of Defendant was to provide permanent alternate accommodation admeasuring 350 square feet carpet area and to pay transit rent. The obligation upon the Plaintiff was to hand over vacant possession of the premises occupied by her. There is also another agreement of the same date i.e. 19th December, 2009 entered into between the Plaintiff and the Defendant, which has been produced by the Defendant. The agreement records that the Plaintiff had represented to the Defendant that it was not conducive to avail of alternate accommodation at the site and had expressed her desire to make arrangements for alternate accommodation, in the event of the Plaintiff being provided with compensation against surrendering her rights and possession of the existing structures to the Developer. It records that upon the Plaintiff being provided with compensation against surrendering the rights in and possession of the existing structure to the Defendant, the Defendant would be enabled to utilise the proposed alternate

accommodation to rehouse any other eligible slum dweller or project-affected person under the Slum Development Scheme of the Government of India. Clause (3) of the agreement records that the Plaintiff has agreed to surrender all her right, title, interest, and claims in the existing premises in favour of the Defendant and the full, total, and complete cost and price for surrender of the existing premises and for acquiring another accommodation was mutually agreed at Rs.5,00,000/-. Clause (5) records that the sum of Rs 5,00,000/ has been paid by the Defendant to the Plaintiff. Clause (6) records that simultaneously with the execution of the agreement, the Plaintiff has handed over vacant and peaceful possession of the existing premises and the Defendant has resumed physical possession thereof. The agreement has been signed by the Director of the Defendant and by the Plaintiff. The agreement has been produced by the Defendant in support of its claim of a composite arrangement having been entered into between the Plaintiff and her family members.

19. The Defendant has also produced, along with its reply, the statement detailing the agreements entered into between the Plaintiff and the other family members, which shows ten

agreements executed with the Plaintiff and her husband agreeing for compensation of Rs.5,00,000/- each styled as Tenant Compensation, four agreements entered into between the Plaintiff and her husband styled as alternate agreement, and two agreements dated 8th February 2010 with the Plaintiff as rent agreements for a rent period of 22 months for the period 8th December, 2011 for Rs.3,74,000/- each.

20. *Prima facie*, from the material on record, apart from the alternate accommodation agreements, there are other agreements executed by the Plaintiff, under which the Plaintiff and her husband have received substantial amount of Rs 50,00,000/-. The plaintiff is conspicuously silent on the receipt of Rs 50,00,000/-. The submissions canvassed indicates that the Plaintiff seeks to distance herself from the other agreements under which she and her husband have received substantial amount and would assert her rights under the two permanent alternate accommodation agreements. The agreements will have to be considered holistically to appreciate the true nature of arrangements between the parties, the adjustment of the amounts paid, the default, if any, etc. These issues require evidence to be led. The Defendant would

rely on the ten agreements executed with the members of the Plaintiff's family, as set out in the statement annexed to the affidavit in reply, to claim composite arrangement entered into between the Defendant and the Yadav family and the breach thereof. The Plaintiff has admitted the existence of ten agreements and receipt of Rs 50,00,000/ as compensation but claims that the same has been paid towards acquiring other huts, whereas the suits filed by the Plaintiff's children acknowledge that the Yadav family was in possession of four structures. In the affidavit of December, 2019, the Plaintiff has stated that the Defendant has taken five other structures for which they have paid Rs 5,00,000/- each.

21. In the reply dated 10th September 2013 filed by the Defendant to the Plaintiff's notice dated 6th August 2013, the Defendant has referred to the composite arrangement under which all four structures were required to be handed over for which compensation of Rs.50,00,000/- was paid. The said reply also refers to two agreements dated 8th February 2010 recording payment of Rs.3,74,000/- under each of the agreements executed by the Plaintiff towards 22 months' rent in respect of all four

structures as well as the fact that the two structures, of which possession was not handed over, were demolished by the Mumbai Municipal Corporation, against which the Plaintiff's children, Ravi Yadav and Manju Yadav, had instituted suits.

22. The Defendant claims that the Yadav family occupied four structures and under the composite agreement, all four structures were required to be handed over, whereas the Plaintiff claims that there were about ten structures for which ten agreements were executed under which Rs 5,00,000/ each were paid.

23. There is no clarity as to the number of structures which were in occupation of the Plaintiff, the reason for payment of Rs 50,00,000/ as there are two different arrangements on record i.e. one in the nature of surrender of rights and other for Permanent Alternate Accommodation of the same date. The Plaintiff has also received payment of Rs 7,48,000/ as advance transit rent. In event the Plaintiff and her husband were in occupation of four structures only, the demolition of two structures by the Corporation would *prima facie* constitute breach of obligation. Even if the structures which were demolished were occupied by the Plaintiff's children, considering the payment of Rs 50,00,000/ , *prima facie* it appears

that the understanding was to hand over possession of all four structures. *Prima facie*, at this stage, without evidence being led, there is no clarity about the nature of arrangement between the parties or even about the number of structures which were in occupation of Yadav family. The Plaintiff seeks interim relief of payment of transit rent from the year 2011 onwards claiming default in payment of transit rent as the sum of Rs 7,48,000/ was received as rent for 22 months for two structures. There is no accounting of the sum of Rs 50,00,000/ admittedly received by the Plaintiff and her husband. The Defendant claims breach of the agreement by the Plaintiff which will have to be considered in the context of overall arrangement entered into between the parties. The Plaintiff's agreements cannot be considered in isolation of the other agreements under which the Defendant has parted with substantial consideration. The payment of Rs 50,00,000/ cannot be ignored and have to be accounted for by the Plaintiff.

24. The Plaintiff's reliance on the writing dated 8th February 2010, does not find place in the plaint and is produced subsequent to the conclusion of the oral arguments. The Trial Court has rightly not referred to the writing which is not pleaded in the plaint. Even

accepting the documents on record establishing the handing over of possession of two structures, the payment of Rs 50,00,000/ would cover the liability of payment of transit rent. In view of the substantial payment received by the Plaintiff and her husband, at this stage, it is difficult to accept that there is default in payment of transit rent. In event the Defendant succeeds in the trial to establish the breach of obligation by the Plaintiff, the restitution would be difficult.

25. The Defendant has also instituted independent proceedings claiming breach of contract based on the composite agreement and there is dispute about the compliance of obligation by the Plaintiff endangering the subsistence of the agreements of which specific performance has been sought. The Trial Court has rightly noted that substantial amount has been paid by the Defendant to the Plaintiff even though pertaining to other agreements and that the existence of agreement is disputed on the count of breach.

26. The Plaintiff has suppressed the receipt of Rs 50,00,000/ and failed to account for the same while seeking transit rent from November, 2011 onwards. In event the payment of Rs 50,00,000/, was not towards the payment of transit rent, the Plaintiff is

required to explain the purpose for the said payment. The answer to these issues require evidence to be led and no prima facie case of default in payment of transit rent is made out by the Plaintiff. As the Plaintiff is in receipt of substantial amount and the documents indicate that two of the structures were demolished by the Corporation, the balance of convenience is in favour of the Defendant. The rejection of the interim application does not cause irreparable loss to the Plaintiff as the Plaintiff would be entitled to the same in event the suit is decreed.

27. In the case of ***Metro Marins & Anr. vs. Bonus Watch Co. (P) Ltd. & Ors.*** (supra), the Hon'ble Apex Court noted the decision in ***Dorab Cawasji Warden v. Coomi Sorab Warden***⁵ that an interim mandatory injunction can be granted only in exceptional cases. In ***Dorab Cawasji Warden*** (supra), the Hon'ble Apex Court held in paragraph 16 and 17 as under:

“16. The relief of interlocutory mandatory injunction are thus granted generally to preserve or restore the status quo of the last non-contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. But since the granting of such an injunction to a party who fails or would

⁵ (1990) 2 SCC 117
SQ Pathan

fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm, Courts have evolved certain guide-lines. Generally stated, these guidelines are:

- (1) The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima facie case that is normally required for a prohibitory injunction;
- (2) It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money;
- (3) The balance of convenience is in favour of the one seeking such relief.

17. Being essentially an equitable relief the grant or refusal of an interlocutory mandatory injunction shall ultimately rest in the sound judicial discretion of the court to be exercised in the light of the facts and circumstances in each case. Though the above guidelines are neither exhaustive nor complete or absolute rules, and there may be exceptional circumstances needing action, applying them as pre-requisite for the grant or refusal of such injunctions would be a sound exercise of a judicial discretion."

28. Applying these principles to the facts of present case, the present case cannot be said to be an exceptional case warranting grant of mandatory injunction of payment of transit rent in view of the admitted position of receipt of substantial amount from the Defendant.

29. The Trial Court has rightly considered the material on record to conclude that the Plaintiff's claim for payment of transit rent is not justified at this stage.

30. In light of the discussion above, both the Appeals are devoid of merits and stand dismissed.

31. Interim Applications do not survive for consideration and are disposed of accordingly.

SHARMILA U. DESHMUKH, J.