
(1997) 02 BOM CK 0020
In the Bombay High Court
Case No : First Appeal No. 792 of 1995

Charles Alias William Peter D'Souza	Vs	APPELLANT
Smt Mary Thomas Pinto and Others		RESPONDENT

Date of Decision : 18-02-1997

Acts Referred:

MAHARASHTRA HOUSING AND AREA DEVELOPMENT ACT, 1976 — Section 173, 177, 2

Citation : (1997) 99 BOMLR 733(1)

Hon'ble Judges : R.G. Vaidyanatha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.G. Vaidyanatha, J.—This is defendant's appeal against the judgment and decree dated 13.7.1995 in Short Cause Suit No. 1586 of 1984 on the file of the City Civil Court, Bombay. Heard the learned Counsel for the appellants and the learned Counsel for respondents Nos. 1 to 4. None appeared for respondent No. 5.

2. The respondents Nos. 1 to 4 filed a suit in the trial Court against the appellant and the second respondent for certain reliefs in respect of room No. 40 in the second floor of Tardeo Mansion Building No. 1, Bombay. Their case is that deceased Pinto—the husband of the first plaintiff and father of plaintiffs Nos. 2 to 4 was the subtenant of the suit premises. Pinto died on 7th June, 1979. The first defendant, the present appellant, is the son of first plaintiff's sister. The second defendant is a statutory corporation popularly known as the Maharashtra Housing and Area Development Authority. The rent for this room was Rs. 30/- per month. One Bhavanji Ahubhai was the original tenant of the said room who sublet the same to Mr. Pinto. It is also the plaintiff's case that the plaintiff was looking after a Parsi couple and was staying with them at Sherin Mansion. The first defendant was allowed to sleep in the suit room without any charges. The entire building collapsed in 1977. The second defendant has a statutory duty to repair or reconstructing the collapsed building, in the meanwhile, to provide alternate

accommodation to the occupants of the building. It is also stated that prior to the collapse of the building, the tenants association of Tardeo Mansion collected funds for the repairs of the building and issued notice to Pinto and collected Rs. 1,500/- from him. Mr. Pinto was paying the rent for the said premises till the building collapsed. The new building was reconstructed by the second defendant and was allotted to the earlier occupants sometime in 1984. After coming to know that the building newly reconstructed, the plaintiffs found that the first defendant has manoeuvred to get his name recorded for getting a room allotted in the new premises and he also obtained an alternate temporary accommodation at Borivali from defendant No. 2. The first defendant has got temporary accommodation by making false representation to the second defendant. It is alleged that the first defendant was never in occupation of the suit premises, but he was allowed only to sleep during the night and the room was in the actual possession of Mr. Pinto and the plaintiffs. Now it is apprehended that the second defendant may hand over the newly reconstructed room to the first defendant, that the first defendant had no legal right of occupation in respect of the room No. 40 in the old building which has collapsed. Hence, the plaintiffs have filed this suit for a declaration that Mr. Pinto till his death and subsequently, the plaintiffs are entitled to be allotted the newly reconstructed room No. 40 on the ground floor of the Tardeo Mansion building or any other equivalent, room that may be allowed by defendant No. 2 in lieu of the same. He has also prayed for injunction to restrain the first defendant from taking alternate accommodation, from second defendant and injunction against the second defendant to allot any premises to the first defendant in lieu of room No. 40 in Tardeo Mansion building No. 1 and also for mandatory injunction directing the second defendant to allot equivalent new room to the plaintiffs in the new building.

3. The appellant who was the first defendant in the Court below contested the suit by filing the written statement. His defence is that the plaintiffs have no legal right in the old building or in the new building. It is also stated that the suit is bad for nonjoinder of the necessary parties. It is asserted that defendant has been in exclusive use and occupation of room No. 40 as a protected licensee or as a deemed tenant since 1968 and paying rent to the landlord. He was also paying Rs. 250/- and Rs. 300/- to deceased Pinto over and above the rent paid to the landlord. It is stated that plaintiffs always lived at Sherin Mansion and they have not resided in room No. 40. It is stated that deceased Pinto allowed this deceased to occupy the suit premises on payment of Rs. 250/- per month over and above the rent of the room. But the deceased Pinto never passed receipts for payments received by him from this defendant in 1974 and 1977. The first defendants brother and sister had come to stay with him in room No. 40. The payment of Rs. 1,500/- to the tenants' association by Mr. Pinto is admitted but it is stated that he paid the amount for and on behalf of this defendant. Since at the relevant time, the first defendant was suffering from typhoid. This defendant has been allotted alternate accommodation by the second defendant in lieu of his

occupation in room No. 40. Then there is some reference to the tenancy eviction proceedings regarding Sherin Mansion which are not relevant for our present purpose. It is alleged that in these proceedings, the plaintiffs are claiming the exclusive possession of the premises in Sherin Mansion. It is stated that this Court has no jurisdiction to grant relief and plaintiffs are not entitled to any of the reliefs hence it is prayed that the suit be dismissed with costs.

4. The learned Trial Court framed following issues :

1. Whether the plaintiffs prove that the plaintiffs are only legal representatives of Thomas Rozario Pinto and therefore they are entitled to be allotted and to use and occupy the suit room No. 40 on the 2nd floor of Tardeo Mansion, Building No. 1, situated at 93, Tardeo Road, Bombay 34.

2. Whether the plaintiffs prove that they are entitled to be allotted any other room in lieu of suit premises to be allotted by the defendant No. 2 in the reconstructed suit building at Tardeo Building No. 1 ?

3. Whether the plaintiffs prove that defendant No. 1 has no right title or claim or interest in the newly reconstructed building as he had concerned with old premises situated in the suit building Tardeo Mansion Building No. 1, at 93, Tardeo Road, Bombay-34 ?

4. Whether the defendant No. 1 proves that he had paid consideration to deceased Pinto which he promised to adjust towards the suit premises"?

5. Whether the defendant No. 1 proves that he was residing at suit premises as a tenant and was paying to landlord ?

6. Whether the allotment made in favour of the defendant No. 1 was illegal in alternative accommodation and whether the defendant No. 1 & 2 was occupying the suit premises since 1967 as a protected tenant of deceased Thomas Pinto ?

7. Whether the suit is bad for want of notice u/s 173 of MHADA Act?

8. Whether the plaintiffs are entitled to any reliefs ?

9. What order ?

5. On behalf of the plaintiffs one of the plaintiffs viz., third plaintiff was examined as P.W. 1 and first defendant examined himself and one more witness on his behalf. The second defendant neither filed written statement nor adduced any evidence. After recording evidence and hearing both sides, the trial Court came to the conclusion that Mr. Pinto and members of his family have been in legal possession and occupation of room No. 40 and first defendant was only granted permission to sleep in the premises. In view of this finding the trial Court came to the plaintiffs' case and granted a decree as prayed for. It rejected the first defendant's theory that he is in occupation as licensee or as a deemed tenant.

Being aggrieved by the judgment of the trial Court, the original first defendant has come up with the present appeal.

6. The learned Counsel appellant questioned the correctness and legality of the impugned judgment. He contended that the evidence on record is sufficient to hold that the appellant was the occupier and was entitled to be allotted the premises in the new building and the finding of the trial Court is liable to be set aside. He asserted that the plaintiffs were not in possession or occupation of the room No. 40 and they always resided in Sherin Mansion and as such, they are not occupiers within the meaning of the Maharashtra Housing and Area Development Act, 1976 (hereinafter referred to as "the Act") and therefore, they are not entitled to be allotted any premises in the new building constructed by second defendant. It was further argued that the suit was not maintainable in a Civil Court in view of the bar of jurisdiction as provided in Section 177 of the Act. He therefore, submitted that the appeal may be allowed and the suit filed by the plaintiffs may be dismissed. On the other hand, while supporting the impugned judgment, the learned Counsel for the respondents Nos. 1 to 4 contended that there is no bar of jurisdiction for the suit since the competent authority under the Act has no power to decide the rival claims regarding a particular premises.

7. In the light of the arguments addressed before me, the points that fall for determination are :

(i) Whether Mr. Pinto and subsequently the plaintiffs were in possession of room No. 40 as sub-tenant and entitled to the allotment of alternate accommodation in the newly constructed building as claimed in the plaint ?

(ii) Whether the appellant first defendant was in occupation of the room No. 40 either as a licensee or as a deemed tenant and hence entitled to allotment of alternate premises in the newly reconstructed building ?

(iii) Whether the suit is not maintainable as contended ?

(iv) What order?

Points Nos. (i) & (ii)

8. Points Nos. (i) and (ii) may be taken up together since they are two faces of the same question. Admitted facts are that Mr. Pinto was the sub-tenant of room No. 40. The appellant has taken a stand and he has admitted in his evidence also that he took the premises from Mr. Pinto. Therefore, the fact that Mr. Pinto was the subtenant has never been in dispute. The only question is whether Mr. Pinto inducted the appellant as the licensee on payment of consideration as contended by the appellant or not. The fact that the appellant was residing there or was allowed to stay in the premises also not in dispute. The plaintiffs' contention is that appellant was only given permission to sleep in the premises without any payment of rent or charges. From a perusal of the evidence we find that the appellant and plaintiffs are close relatives. The appellant is no other than the nephew of the first plaintiff being her sister's son. We are not concerned with a dispute between strangers. If sister's son is allowed to stay in the premises only for sleeping, he cannot get any legal right in the premises. It is purely permissive

occupation being a member of the family or being a close relative of the family members. Such a person cannot get any legal right or legal possession or legal occupation in the premises. However, the plaintiffs' case is that it was a permission granted gratis. If the appellant can prove that he was in exclusive possession of the premises on payment of Rs. 250/- or Rs. 300/- per month as alleged by him, then he may get a legal right. Admittedly no receipts are passed by Mr. Pinto or by the plaintiffs regarding the alleged payment of Rs. 250/- or Rs. 300/- per month. A mere self-serving and interested assertion of the appellant that he was making a payment of Rs. 250/- or Rs. 300/- per month cannot be taken at its face value particularly because of the close relationship between the parties. A uncle would not have taken rent from a nephew who had come from the village to stay in his house at Bombay. It appears to be highly improbable if not impossible.

9. The appellant's version that he was paying a rent of Rs. 250/- or Rs. 300/- on the face of it appears to be improbable from another point of view. As rightly pointed out by the learned trial Judge, the appellant was working as a Peon in a Bank. At the relevant time, on his admission, his salary was Rs. 165/- per month. He further admitted that he had no other source of income. A Peon who has come to Bombay to earn his livelihood getting a salary of Rs. 165/- per month cannot go to the extent of paying Rs. 250/- to Rs. 300/- per month as rent. No attempt is made in the re-examination to explain this apparent inconsistency in the evidence. The only submission made before me on behalf of the appellant is that his admission regarding salary is not correct. He has not made any attempt to produce his salary certificate to show as to what was his salary per month. The admission is clear and unequivocal. In the face of this admission, the appellant's theory of paying Rs. 250/- or Rs. 300/- falls to the ground. This is further strengthened by the fact that admittedly there are no rent receipts issued by Mr. Pinto or by the plaintiffs to the appellant.

10. In view of the close relationship between the parties, the theory of uncle receiving rent from the nephew also appears improbable. That is why, the appellant wanted to take a stand that he took the premises directly from the landlord and in that case, he had to pay Rs. 30/- per month. That was the stand taken by him in the affidavit Exhibit 2 filed by him before the 2nd defendant in getting the temporary accommodation. In Exhibit 2, he has taken a stand that one Bhanji Nisan was the original tenant and he vacated the premises by transferring the possession to the appellant with the permission of the landlord without reservation of any right. In this affidavit, there is no whisper about Mr. Pinto. In the evidence, this fact was confronted to the first defendant but he was not able to give any satisfactory answer. In examination-in-chief, this is what the first defendant has told the Court :

When I occupied the suit premises, the same was vacant. Mr. Thomas Pinto gave me the said premises as a licensee to occupy the said room. I was paying the compensation to the Thomas Pinto at the rate of Rs. 300/- per month.

Therefore, his clear case is both in the evidence and in the written statement that he came to occupy the premises as a licensee of Mr. Pinto. But in Exhibit 2 he gives a go by to this theory and claims that he was given premises directly by the original tenant with the consent of the landlord. In one of the applications given by plaintiffs to MHADA they have made an allegation against the first defendant that by misrepresentation and fraud, the first defendant has obtained a temporary accommodation in their letter to the second defendant (vide Exhibit E dated 23.2.1981). It is in evidence that the building collapsed some time in 1975. The first defendant made an application to MHADA and got the allotment in his favour regarding transit accommodation. That is how, he has been issued the notice to vacate as per Exhibit 1 dated 1.6.1974. The learned Counsel of the appellant placed reliance on Exhibit 1 to show that MHADA has recognised the appellant as the occupier of the building. We have also seen that the first defendant asserted in his affidavit that he got the premises directly from the tenant. If he had even mentioned Mr. Pinto as the sub-tenant in Exhibit 2, then probably the MHADA would have inquired about Pinto or would have issued notice to the plaintiffs before allotting the temporary accommodation to the plaintiff. Any how, the first defendant has no exclusive possession of the suit premises in view of the stand taken by him in Exhibit 2 and on inconsistent stand in the written statement wherein he has claimed directly through Mr. Pinto and not through the original tenant.

11. It is true that the plaintiff was staying in Sherin Mansion looking after a Parsi couple. The plaintiffs' case is that some of the plaintiffs particularly, children were staying in the suit premises and the mother was staying in Sherin Mansion. In view of the close relationship between the appellant and the plaintiffs, we cannot give much importance to the fact whether they were staying in suit premises or in Sherin Mansion. A nephew who has been given permission gratis cannot claim any right. If we accept the theory that the appellant was given gratuitous permission or gratuitous licence, it does not create any legal right in him to come within the meaning of "occupier" in 2(25) of the Act; though it refers to different classes of persons who may be called as "occupier", there is no provision for a permission granted gratuitously to a relative. The Appellants occupation or possession, if any, in possession of a relative or a member of a family staying their gratuitously. Such a person does not come within the meaning of "occupier" as defined in Section 2(25) of the Act. I am not happy about the discussion of the trial Court about the word "occupier" and Clauses (d) and (e) referred to therein. Clause (e) refers to trespasser since he is a person, who is liable to pay to the owner damages for use and occupation. Therefore, I am not impressed by the discussion of the trial Court regarding the definition of the word "occupier" with reference to the evidence on record. But in my view, the evidence on record clearly shows that the appellant was permitted to stay in the premises gratuitously being the nephew of the first plaintiff. Such a person does not come within the meaning of occupier as defined in Section 2(25) of the Act. The learned trial Court has not considered the position of the appellant from

this point of view. Even though I disagree with the reasoning of the learned trial Court, on this point, I fully agree with him in the finding that the appellant is not an occupier as defined in Section 2(25).

12. In a case of this type, when we are concerned with close relatives and gratuitous permission being granted to the appellant, we need not give importance to the actual possession of the plaintiffs or fact that the plaintiffs had been residing in Sherin Mansion etc. when the appellant was staying in the suit premises under gratuitous permission he cannot claim any legal right. In fact, we have the notice issued by the tenant's association to Mr. Pinto on 16.8.1975 as per Exhibit B and asking him to contribute towards the repairs. Then it is in evidence and also not disputed that Mr. Pinto paid Rs. 1,500/- as per the counterfoil of the cheque Exhibit C dated 31.10.1975. The appellant also admits that Mr. Pinto has paid this amount. If Pinto had nothing to do with the suit premises and had permanently shifted to Sherin Mansion, there was no necessity for him to receive the notice Exhibit B and again to make payment as per Exhibit C. The appellant's explanation on this point is that he has not well at that time and therefore, Mr. Pinto paid this amount on his behalf which is subsequently repaid. The learned trial Judge rightly disbelieved this statement of the appellant which is self-serving and interested and being not corroborated by any material on record. It may be that the appellant has also received a notice from MHADA and notice from the tenant's association or his name appears in the circular issued by the tenants' association. Since the appellant was staying then, there is every possibility of issuing him a letter or MHADA issuing notice as per Exhibit 1 but it does not confirm any legal right to occupy the premises on him when he was in permissive possession gratuitously being a close relative of the first plaintiff.

13. As far as allotment of the premises is concerned, we find that the plaintiffs have made their claim before the competent authority asking for allotment as per Exhibit E, then MHADA issued a notice to the plaintiffs to produce their documents as per Exhibit K. There is one more reminder by MHADA as per Exhibit G. Then we find that as per Exhibit J dated 20.4.1983, the first plaintiff has written a letter to MHADA by producing documents running into 35 pages in support of her case. A perusal of the list of documents in that letter shows that they pertain to her possession and occupation of room No. 40. Then we find that MHADA issued notice to the first defendant as per Exhibit K dated 16.5.1983 asking him to produce his documents. Then one more reminder was issued to the first defendant as per Exhibit L dated 9.7.1983 asking him to produce the documents within 7 days, failing which it is presumed that he has no evidence to prove his claim. Copy of this letter has been marked to the first plaintiff. There is no material on record to show that first defendant produced any document before the concerned authority after Exhibit L.

14. As already stated, the first defendant is relying on Exhibit 1 which is a notice to quit and offering temporary accommodation. This does not confer any right for

two reasons. It may be self serving since first defendant approached Mil ADA for temporary accommodation from the competent authority by filing an affidavit Exhibit 2 claiming that he is a direct tenant or sub-tenant under the previous tenant without disclosing that he was inducted by Mr. Pinto. If he had disclosed the name of Mr. Pinto in that affidavit, probably MHADA would not have issued him with quit notice without making inquiries with Mr. Pinto's family. Then Exhibit 2 is the affidavit to which I have already referred to. Exhibit 2 and 3 pertain to the alternate accommodation building at Borivali where admittedly the first defendant is residing and about which there is no dispute.

The appellant has not produced any documents to show payment of rent by himself either to the original tenant or to Mr. Pinto. A bald self-serving and interested assertion of the appellant has been rightly disbelieved by the Court below. After reappreciating the evidence, I do not find any reason to accept the appellant's case which suffers from inherent improbability already mentioned above.

15. In this appeal, the learned Counsel for the appellant has filed an application being Civil Application No. 811 of 1997 for permission to adduce additional evidence under Order 41 Rule 27 of the CPC along with an application X'erox copies of two extracts of the electoral roll for the period 1972 to 1977. The learned Counsel for the respondents Nos. 1 to 4 seriously opposed this application on the ground that this document pertains to the period prior to the suit and the appellant should have produced this evidence in the Court below and no case is made out for admitting additional evidence at this stage. Then on merits he argued that these two documents will not affect the appellant's case in any way.

It may be that strictly speaking the appellant has not made out sufficient cause for admitting additional evidence at this stage. Both these two documents are public documents and therefore there cannot be any dispute about their genuineness. The documents only show that appellant being resident of room No. 40 of Tardeo Mansion and it shows Mr. Pinto's family residing in the Sherin Mansion. In my view, these documents will not help us in any way. I have already shown that appellant's occupation or stay in the suit premises was only permissive possession and granted gratis without any legal right. Therefore, these two documents will not help us in any way in the final disposal of the appeal. Hence, the Civil Application No. 811 of 1997 is disposed of accordingly by holding that these two documents will not help the appellant in any way to prove his legal possession of the premises.

16. The learned Counsel for the appellant relied on *Sharmila v. State of Mah* 1991 M.L.J. 902. That was a case where the premises was allotted to the petitioner before the High Court by the Deputy Chief Officer which was subsequently set aside by the Chief Officer of the MHADA and the premises was allotted to the tenant of the premises. Then the Petitioner filed the writ petition in the High Court. The High Court found that admittedly the petitioner was in

occupation under a leave and licence agreement executed by the tenant. It was therefore, pointed out that when possession is admitted and is based on a written agreement namely leave and licence agreement, the Petitioner was entitled to be treated as occupier without going to the question of whether the leave and licence agreement was valid or not. In my view, the said decision has no bearing on the point under consideration. That was a case where the possession was referable to a leave and licence agreement and possession of the petitioner was admitted and the tenant, second defendant was not in occupation of the premises.

In the present case, the appellant is claiming possession under an oral licence but on facts, I have reached a conclusion that he being a nephew was being permitted to stay in the premises gratuitously without having any legal right. A person who has been granted permission gratuitously does not come within the meaning of "occupier" u/s 2(25) of the Act. As already.

As far as oral evidence of the appellant and his witness is concerned, my finding is that their evidence will not support legal occupation or legal possession except permission to stay gratuitously.

Hence after reappreciating the evidence I agree with the trial Court and hold that the first appellant is not entitled to allotment of the premises in the reconstructed building. On the other hand, the plaintiffs have proved that they are the legal heirs of the tenant Mr. Pinto and hence they are entitled to the newly reconstructed premises. Points Nos. 1 and 2 are answered accordingly.

Point No.(iii)

17. It was argued by the learned Counsel for the appellant that having regard to Section 177 of the Act, the suit is not maintainable in Civil Court.

Section 177 of the said Act reads as follows :

177. Save as otherwise expressly provided in this Act, no civil court shall have jurisdiction in respect of any matter which the Authority or the Tribunal is empowered by or under this Act, to determine; and no injunction or stay shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred or duty imposed by or under this Act.

The Civil Court is barred from deciding any matter which the Authority under the Act has to determine.

Now the question is whether the dispute raised in the present suit is a matter which the Authority under Act can decide. Though, there is a provision under the Act, that an occupier can be allotted a premises in the new building, I do not find in the scheme of the Act providing for dispute between two or more rival claimants. In Chapter 6 of the Act there is a provision for eviction of persons in occupation of the premises of MHADA by holding an inquiry by the Competent Authority with a provision for appeal to higher authority. But no such provision is

made in Chapter 8 in which there is a provision for allotment of transit accommodation and permanent accommodation when there is no provision as to whether the matter before him is a matter which the Act has empowered, the Tribunal or the Authority to determine. Then it is observed as follows :

If the question involved or the matter raised is not a question in respect of which no power is conferred upon the Authority to determine, Section 177 clearly has no application.

It is therefore, clear that before attracting the power u/s 177 of the Act, the Court must come to the conclusion that the dispute raised in the suit is a matter which has to be decided by the Competent Authority under the Act.

18. We have already seen the nature of dispute in the suit. Here the plaintiffs are claiming that they are in possession of the suit premises as sub-tenant under the original tenant. The first defendant is contending that he is a licensee under the first plaintiff's husband and in another breath he says that he is a sub-tenant directly under the tenant. Such a dispute is not one to be decided or determined by the Competent Authority under the Act and no procedure is prescribed as to how such matter should be inquired and there is no provision for appeal against a decision of the Competent Authority. Hence, in the circumstances, I hold that the present dispute raised in this suit is not one which has to be determined by the Competent Authority under the Act and therefore, the bar u/s 177 of the Act is not attracted to the present suit.

The learned Counsel for the Appellant also invited my attention to a case reported in *Harishchandra Mahadeo Mistry Vs. V.V. Afzalpurkar and others*, . In my view, this decision has no bearing on the point under consideration. The question of bar of jurisdiction u/s 177 of the Act was neither raised nor decided in the Writ Petition. The question of dispute between rival claimants also did not arise for consideration in that case. There, the question was about the jurisdiction of the Authority to provide accommodation. Hence in my view, this decision is not relevant for our present purpose. For the above reasons, my finding on Point No. (iii) is in the negative.

Point No. (iv)

19. In view of my finding on Points Nos. (i) to (iii), the appeal has to fail. At this stage, the learned Counsel for Respondents Nos. 1 to 4 bring to my notice that Respondents Nos. 1 to 4 have been prevented from taking possession of the premises by virtue of the injunction order obtained by the appellant in this appeal and therefore, a direction may be given to the appellant to pay whatever amount that is payable to MHADA from the date of the appeal till the date of delivery of possession. We do not know whether MHADA is going to charge any rent or not. When the premises is not occupied due to pending dispute in the Court how much amount, if at all, is due to MHADA is also not known to us at this moment; the question rises can strictly that if and when MHADA makes allotment to Respondents Nos. 1 to 4. Therefore, we can leave this question open

and it may be decided if and when the allotment is made to Respondents Nos. 1 to 4. Then liberty is given to them to apply to this Court and seek directions against the appellant for payment of the amount that is due to MHADA as a result of keeping the premises vacant due to the order of injunction obtained by the appellant in this appeal.

It is seen that Civil Application No. 5148 of 1995 and Civil Application No. 6335 of 1995 are also pending. Since the appeal itself is being disposed of, both the Civil Applications are disposed of without there being any further orders.

20. At this stage, it may also be noted that Civil Application No. 6335 of 1995 was filed by respondents Nos. 1 to 4 bringing to the notice of the Court that the appellant has acquired ownership flat in v Shramsaphalya Co-operative Housing Society Limited, at Mira Road, District Thane and therefore, he does not need the suit premises and the earlier interim order of stay granted may be vacated. The appellant filed a reply admitting that the flat has been purchased in his name though- he added that it was meant for his brother and sister. In fact, the learned Counsel for respondents Nos. 1 to 4 also brought this fact as an additional ground to show that when appellant has taken a loan and purchased another flat on ownership basis it belies his theory of his possession as a deemed tenant or a licensee of room No. 40. Any how, since on merits, I am not rejecting the appellant's case, I need not go in detail to this point.

21. In the result the appeal fails and is dismissed with costs of Respondents Nos. 1 to 4. All the Civil Applications viz., Civil Application No. 811 of 1997, Civil Application No. 5148 of 1995 and 6335 of 1995 are also disposed of with no further orders.

Liberty is given to respondents Nos. 1 to 4 to apply to this Court for payment of any amount by the appellant if and when MHADA demands money from them regarding the rent for the vacant premises in the new building as mentioned in due course of judgment.

At this stage, the learned Counsel for the appellant prays for stay for this judgment, for six weeks. The learned Counsel for respondents Nos. 1 to 4 opposes. In my view, staying of this judgment is not necessary. However, respondents Nos. 1 to 4 are directed not to take possession of the premises in the new building in pursuance of this judgment from the second defendant for a period of four weeks from today.

Certified copy of this judgment be issued expeditiously.