

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/FIRST APPEAL NO. 4922 of 2023****With****CIVIL APPLICATION (FOR STAY) NO. 2 of 2023****In R/FIRST APPEAL NO. 4922 of 2023****With****R/FIRST APPEAL NO. 4923 of 2023****With****CIVIL APPLICATION (FOR STAY) NO. 2 of 2023****In R/FIRST APPEAL NO. 4923 of 2023**=====
M/S AL AMIN BAGS THROUGH PROPRIETOR MOIZBHAI**Versus****PRIYADARSHANBHAI BHIMBHAI MEHTA**
=====**Appearance:****MR NILESH M SHAH(780) for the Appellant(s) No. 1****MS.DILBUR CONTRACTOR(6388) for the Defendant(s) No. 1**
=====**CORAM:HONOURABLE MS. JUSTICE NISHA M. THAKORE****Date : 09/05/2025****ORAL ORDER****Order in First Appeals:**

Heard Mr. Nilesh Shah, learned advocate for the appellant. At the outset, learned advocate has invited attention of this Court to the order dated 1.2.2024 passed by the Coordinate Bench, whereby, responsible officer of the Corporation was directed to remain present with all the details of the allotment of the property. Noticing the fact that specific case has been pleaded by the original plaintiff to the effect that tenants have surrendered their tenancy rights and alternative property has been provided by the Corporation under the scheme as the shops being demolished for expansion of the road. An additional affidavit on behalf of the appellant has been filed to indicate that in fact the appellants have been provided alternative accommodation only to the extent of the demolished part of the shop and they still continued to be the tenant of the remaining portion of the suit

property. Hence, according to them, there is no termination of their tenancy rights with regard to undemolished part of the suit property. By referring to aforesaid averments in the additional affidavit, learned advocate for the appellant has submitted that the trial Court committed serious error in not appreciating the above aspect. They have further pointed out that in fact they are facing execution proceedings, whereby, they apprehend dispossession from the suit premises and has therefore, urged this Court to admit the present appeals and to stay the impugned order being passed without jurisdiction.

2. Learned advocate Ms. Contractor for the respondent - original plaintiff has submitted that in fact despite sufficient opportunities being granted to the present appellants, they have chosen not to contest the suit as they failed to appear before the trial Court and led evidence. The suit was, therefore conducted ex-parte. She has further pointed out that in fact First Appeals have been preferred only when the execution proceedings were preferred by the present respondent- original plaintiff. The attention of this Court was invited to the issues framed and has submitted that the trial Court on appreciation of the evidence has rightly passed the impugned order directing the original defendants to vacate the suit premises.

3. In rejoinder, learned advocate for the appellant has placed heavy reliance upon the contents of the writ petition filed by the present respondent being Special Civil Application No.13774 of 2012 by highlighting the averments made in para 3.5 of the aforesaid petition wherein reading of the contents

clearly goes to suggest that admittedly the present appellants continued to be the tenants of the undemolished part of suit premises.

4. Considering the rival submissions made by the learned advocates for the respective parties, the issue of jurisdiction requires consideration. Hence, let notice be issued upon the respondent, making it returnable on 11.06.2025.

ORDER IN CIVIL APPLICATIONS:

1. Considering the aforesaid submissions and grounds raised in the appeal, let notice be issued upon the respondent, making it returnable on 11.06.2025.

2. In the meanwhile, considering the fact that the execution proceedings are scheduled for hearing on 16.05.2025, by way of ad-interim relief, there shall be stay against the execution proceedings till next date of hearing on condition of deposit of the mense profit as directed by the trial Court. Let, an amount of Rs.1,40,000/- towards mense profit viz. from September 2013 till the month of May 2025, be deposited with this Court on or before next date of hearing. Let, an undertaking may also be filed declaring that henceforth, the respective applicants shall deposit amount of Rs.1000/- mense profit as directed by the trial Court, pending hearing of these applications. It would be open for the applicants to deposit the said amount henceforth every six months.

RATHOD KAUSHIKSINH

(NISHA M. THAKORE,J)