

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
CIVIL APPELLATE JURISDICTION**APPEAL FROM ORDER (ST.) NO.26578 OF 2025**
WITH
INTERIM APPLICATION (ST.) NO.5800 OF 2026
WITH
INTERIM APPLICATION (ST.) NO.26579 OF 2025

Nisha Anil Vaswani and Anr.

.. Appellants

VersusDimple Himanshu Ajwani Nee Dimple Mahinder
Vaswani and Ors.

.. Respondents

.....

- Mr. Shailendra Pagare a/w. Mr. Sagar Tambe, Advocates for Appellants.
- Mr. Abhishek Salian a/w. Ms. Kinnari Raut, Advocate for Respondent No.5.

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CORAM : MILIND N. JADHAV, J.**DATE : MAY 06, 2026****P.C.:**

- 1.** Not on Board. Mentioned by way of filing praecipe dated 06.05.2026. Perused the praecipe.
- 2.** Heard Mr. Pagare, learned Advocate for Appellants and Mr. Salian, learned Advocate for Respondent No.5.
- 3.** Present *lis* emanates from redevelopment of the suit premises. Suit premise is flat namely Flat No.25 in Suryakiran Cooperative Housing Society. According to Appellants who are Defendants before the Trial Court and their names are Nisha Vaswani and Aditya Vaswani. They are occupants of the suit flat. Building has gone for redevelopment.



4. Mr. Salian, learned Advocate appears for the Society. Development Agreement has been executed by the Society. The flats are required to be vacated and handed over to Developer / Society for redevelopment. Dispute has arisen with respect to the emoluments and entitlements. Plaintiffs before Trial Court are Dimple Ajwani and Yash Vaswani. Suit plaint is appended at page No.11. Dimple Ajwani according to Mr. Pagare stays at Goregaon whereas Yash Vaswani also stays at Goregaon. Their addresses are specifically stated in the cause-title of the suit plaint itself.

5. Hence the submission by the learned Advocate is that the ratio of the decision of this Court in the case of *Vipul Fatehchand Shah Vs. Nav Samir Co-operative Housing Society and Ors.*¹ and *Ritesh Halдар Vs. Elie Housing LLP & Ors.*² whenever the property is going in for redevelopment, the transit rent should be given to the persons who has been staying in the property and who will hand over the possession to the Society should be adhered to.

6. Mr. Pagare informs the Court that possession has been handed over to the Developer / Society by the Appellants. Mr. Salian confirms this fact on behalf of the Society. Once this is the position, in view of aforesaid decisions of this Court Appellants before me will be entitled to transit rent since they were residing in the flat and have

¹ Comm. Appeal (L) No.25162 of 2023 decided on 06.10.2023.

² 2025 SC (Online) (Bom) 6710.



handed over possession. However, the learned Trial Court in the impugned order has held to the contrary as argued by Mr. Pagare.

7. Mr. Salian however comes to the aid and assistance of the Court and informs the Court that in the impugned order, liberty has been given to all legal heirs to make an Application for withdrawal of the amounts which have been deposited by the Developer towards transit rent, corpus and other charges in the Court. If this is the case, then the learned Trial Court at the time of allowing withdrawal will undoubtedly hear all parties and pass appropriate orders in accordance with law.

8. Limited grievance of Appellants before me is that in view of decision of this Court in the aforesaid citations, the transit rent be given to them. I *prima facie* agree with the submissions made by learned Advocate, but it would be better if the learned Trial Court decides the issue in the withdrawal application.

9. The learned Trial Court is therefore requested and directed by this Court to apply the principles which have been enunciated by this Court in the aforesaid citations and accordingly ensure that when the parties make an Application to the Court, the Court shall allow the parties to withdraw the said amounts in accordance with law. Needless to state that all contentions of the parties are expressly kept open.

10. Appellants inform the Court that they shall make an



Application forthwith to the Trial Court for seeking withdrawal of the money. Needless to state that principles of law shall be applied for the purpose of enabling the concerned correct parties to withdraw the amounts of redevelopment. In the event if Application is made, learned Trial Court is directed to decide the same forthwith and in any event as expeditiously as possible within a period of four weeks from the date of filing of the said Application. Needless to state that if such Application is made due notice shall be given by Appellants to all other parties in the suit proceedings including the Plaintiffs to enable them to appear before the Court and the Court will also hear all parties.

11. With the above directions, Appeal from Order is disposed. In view of disposal of Appeal from Order, pending Interim Applications are also disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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