

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

**INTERIM APPLICATION (L) NO. 35904 OF 2024
IN
TESTAMENTARY SUIT NO. 105 OF 1998**

Vaibhav Dayabhai Patel .. Applicant
Vs.
Wavell Joseph Pereira & Ors. .. Respondents

Ms. Lalita Rajguru, Ms. Darshana More for Applicant/Original Plaintiff.
Adv. Austin Fernandes for Respondent No. 3.

CORAM : FARHAN P. DUBASH, J.

DATE : 2nd FEBRUARY 2026

P.C.:

1. By an order dated 11th May 2012, this Court recorded the statement on behalf of the Plaintiff that he would vacate his premises if Defendant No. 2 – Developer gives him the same benefits that he had promised to give all the other tenants and enters into a Permanent Alternate Accommodation Agreement (**PAAA**) with him. This Court had accepted the said statement and also recorded the statement made on behalf of Defendant No. 2 – Developer that he would give all the said benefits to the Plaintiff and also enter into the PAAA with him. On these basis, the Plaintiff vacated the premises he was then occupying and handed over possession thereof to

Defendant No. 2 – Developer for re-development of the building.

2. Pursuant to this order, it appears that the Plaintiff was in fact paid the sum of Rs. 16,21,798/- as was promised to him. In fact, Defendant No. 2 – Developer has also entered into a PAAA dated 16th May 2012 with the Plaintiff and Defendant No. 1 – Society. Under this PAAA, Defendant No. 2 – Developer was obliged to put the Plaintiff in possession of new Flat No. 305 situated on the 3rd Floor of the redeveloped building.

3. Mr. Austin Fernandes, learned Counsel who appears on behalf of Defendant No. 3 – Developer informs this Court that his client has since, taken over the said project from the earlier Defendant No. 2 – Developer and completed the project and thereafter, sometime in or about 2019, handed over possession of all the tenements that it had constructed to the Defendant No. 1 – Society, to be handed over to its members. He submits that accordingly, even Flat No. 305 was handed over to the Defendant No. 1 – Society and therefore, his client is now not obliged to handover possession thereof to the Plaintiff. He therefore submits that after 2020, Defendant No. 3 – Developer is also not liable to pay monthly rent to the Plaintiff as falsely claimed.

4. To this, Ms. Lalita Rajguru, learned Counsel who appears on

behalf of the Applicant points out that despite the other members of Defendant No. 1 – Society being put in possession of their respective Flats in the redeveloped building since about 2020, the Plaintiff was not put in possession of his entitlement viz. Flat No. 305. When this Court inquired from Mr. Fernandes as to why the Plaintiff was not put in possession of Flat No. 305 despite the order dated 11th May 2012 and the PAAA executed by the Plaintiff, he responds that this was so because of the dispute pending in Testamentary Suit No. 105 of 1998. He submits that until probate is granted in favour of the Plaintiff, the Plaintiff cannot be put in possession of Flat No. 305.

5. He however candidly admits that till date, there is no order passed by any Court including *inter alia* the Testamentary Court hearing the said Testamentary Suit No. 105 of 1998 which prevents the Plaintiff from being put in possession of the said Flat No. 305.

6. During the course of the hearing today, it is further revealed that one Mr. Ramesh Shah manages and runs Defendant No. 3 – Developer which is a Private Limited Company and he is also a partner / investor of/in Defendant No. 2 – Developer. In fact, it turns out that he is also the Chairman of Defendant No. 1 – Society.

7. Considering the above, this Court deems it fit to summon the said Mr. Ramesh Shah who shall remain present in Court on 9th February 2026 together with the keys of the said Flat No. 305 situated on the 3rd Floor of Defendant No. 1 – Society.

8. Liberty is also given to Defendant Nos. 1 and 3 to file an Affidavit explaining as to why this Court ought not to direct them/any of them to pay the arrears of transit rent to the Plaintiff from 2020 till date, on account of its failure in not handing over possession of Flat No. 305 to him. Let this Affidavit be filed and served no later than 6th February 2026.

9. Stand over to 9th February 2026 at 03:00 pm for further consideration.

(FARHAN P. DUBASH, J.)