

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4027 OF 2015

Mr. Harshad Rana]
Residing at Flat No.103, 203,]
Vicky Apartments Co-operative Hsg.]
Society, B Wing, Plot No.1225, Old]
Prabahadevi Road, Prabhadevi,]
Mumbai 400 025.]..... Petitioner.

Versus

1] Mrs. Vandana Rana]
Residing at Flat No.103, 203,]
Vicky Apartments Co-operative Hsg.]
Society, B Wing, Plot No.1225, Old]
Prabahadevi Road, Prabhadevi,]
Mumbai 400 025.]
2] Vicky Co-operative Housing Society Ltd.]
Plot No.1225, Old Prabhadevi Road,]
Prabhadevi, Mumbai 400 025]..... Respondents.

Mr. Dinesh Purandare a/w Mr. Anupam Dighe a/w Mr. Ajinkya Patil i/by
India Law Alliance for the Petitioner.
Mr. J S Kini i/by Mr. Suresh Dubey for the Respondent No.2.

ALONGWITH
WRIT PETITION NO.4051 OF 2015

Mrs. Vandana Rana]
Residing at Flat No.103, 203,]
Vicky Apartments Co-operative Hsg.]
Society, B Wing, Plot No.1225, Old]
Prabahadevi Road, Prabhadevi,]
Mumbai 400 025.]....Petitioner

Versus

1] Mr. Harshad Rana]

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| | Residing at Flat No.103, 203, |] |
| | Vicky Apartments Co-operative Hsg |] |
| | Society, B Wing, Plot No.1225, Old |] |
| | Prabahadevi Road, Prabhadevi, |] |
| | Mumbai 400 025. |] |
| 2] | Vicky Co-operative Housing Society Ltd. |] |
| | Plot No.1225, Old Prabhadevi Road, |] |
| | Prabhadevi, Mumbai 400 025 |] |
| 3] | The Municipal Corporation of Brihan |] |
| | Mumbai, a statutory corporation |] |
| | constituted under the Mumbai Municipal |] |
| | Corporation Act, 1888, having its office at] | |
| | Mahapalika Bhavan, Mahapalika Marg, |] |
| | Fort, Mumbai, 400 001 |] |
| 4] | The Municipal Commissioner |] |
| | The Municipal Corporation of Brihan |] |
| | Mumbai, having its office at |] |
| | Mahapalika Bhavan, Mahapalika Marg, |] |
| | Fort, Mumbai, 400 001 |] |
-Respondents

None for the Petitioner

Mr. Dinesh Purandare a/w Mr. Anupam Dighe a/w Mr. Ajinkya Patil i/b
India Law Alliance for the Respondent No.1

CORAM : R. M. SAVANT, J.
DATE : 1st July 2015

ORAL JUDGMENT

1 Rule. With the consent of the learned counsel for the parties made
returnable forthwith and heard.

2 The writ jurisdiction of this Court is invoked against the order
dated 24/3/2015 passed by the Maharashtra State Co-operative Appellate

Court by which order the Appeal filed by the Petitioner herein came to be dismissed and resultantly, the order dated 23/12/2014 passed by the Co-operative Court allowing the Application (Exhibit 5) filed by the Respondent No.2 herein i.e. the Society in the Dispute filed by it being Dispute Application No.CC/III/156 of 2014 came to be confirmed.

3 The Petitioner herein and the Respondent No.1 herein are husband and wife and are the owners of two flats, one on the first floor and the other on the second floor of the building known as Vicky Apartments in respect of which building the Respondent No.2 Society is registered. The Dispute between the Petitioner and the Respondent No.2-Society has arisen out of the repair work which was proposed to be carried out by the Petitioner and the Respondent No.1 herein which included the creating and opening in the slab between first and second floor so as to provide for an internal access to the Petitioner from the first floor to the second floor. There are intervening facts relating to the said internal staircase which are at present are not necessary to be adverted to considering the order that is to be passed. The said facts are relating to the reports obtained by the Petitioner, Respondent No.1 and the Respondent No.2-Society in respect of the structural stability of the building, in the event the opening is created in the slab between the first and second floor. In the said Dispute the principal relief sought is to injunct the Petitioner from carrying out the repair work in the flats in question. In the said Dispute,

an application for temporary injunction which was numbered as Exhibit-5 came to be filed and the injunction sought was for restraining the Petitioner from carrying out the repair work in the said flat No.103 and 203 which are of the ownership of Petitioner and the Respondent No.1 herein, without permission of the BMC and the Society. The said application for injunction was relied to on behalf of the Petitioner and the Respondent No.1 herein.

4 The Trial Court i.e. the Co-operative Court considered the said application (Exhibit 5) and having regard to the fact that the Petitioner and the Respondent No.1 without making the compliances of the Resolution dated 10th July 2014 passed by the Respondent No.2 society carried out the work of the internal staircase. The Trial Court was of the view that no prejudice would be caused to the Petitioner and the Respondent No.1 that till compliance of the condition of obtaining the permission of the Disputant society and also obtaining the permission of the MCGM, if injunction is granted. The Trial Court has by its order dated 23/12/2014 has accordingly granted the injunction.

5 The Petitioner carried the matter in Appeal by way of A.O.No.03 of 2015 before the Appellate Court i.e. the Maharashtra State Co-operative Appellate Court. The parties sought to rely upon the material which was already placed before the Trial Court. The Appellate Court has by the impugned order dated 24/3/2015 has dismissed the Appeal. The gist of the

reasoning of the Appellate Court is that any structural changes and repairs, the permission of the Society would be necessary. In the said context, the Appellate Court has adverted to the staircase connecting the second floor. The Appellate Court also took into consideration the fact that the work connecting the two flats by staircase was already over on 26/7/2014. The Appellate Court deemed it fit to confirm the order passed by the Trial Court as according to the Appellate Court whether there was a permission from Society to put up the staircase connecting the second floor being in dispute, the injunction was required to be confirmed. The Appellate court took into consideration the stop work notice issued by the MCGM. It is the said order dated 24/3/2015 which is taken exception to by way of the above Petition.

6 The above Petition has been heard from time to time on various dates and in the course of the hearing of the above Petition, it was contended on behalf of the Petitioner and the Respondent No.1 that they should be permitted to carry out such works as would make the flats habitable as in view of the work which was originally proposed the said flats are presently in a state where they are not habitable. In view thereof it is the case of the Petitioner and Respondent No.1 that they are residing elsewhere. The Petitioner has accordingly filed an affidavit bearing today's date i.e. 1/7/2015 wherein the works which according to the Petitioner are tenantable repairs the Petitioner and the Respondent No.1 intend to carry out. The same have been listed in

paragraph 3 from Item Nos.(i) to (vi), which are as under :-

i] CIVIL WORK AND PLUMBING :-

- a. flooring in the whole flat,
- b. removing of old plaster and doing new plaster on the walls
- c. granite, marble or tile – kitchen platforms, window cills and partitions ever necessary.
- d. Making of toilets and bedrooms, plumbing work for all bathroom, new sanitary ware fixation, wall and floor filing in bathroom and bedroom.

ii] ELECTRICAL WORK: carrying out new wiring in the flat, changing light fixtures and switch boards, making provisions for installation of all house hold appliances like television, refrigerator, air conditioners and other electrical appliances used for household needs.

iii] PLASTER OF PARIS (POP) WORK: Gypsum plaster on all walls, with application of hilus and gypsum boards where ever necessary.

iv] CARPENTARY WORK : New wardrobes, beds with side table all bedroom doors and main doors with door frame, kitchen storage.

v] PAINTING WORK: Painting of all walls and ceiling lamination on wardrobes shutter and door frame applying polish and veneer.

Vi] MISCELLEANOUS : Air condition cooper piping and making provisions for fitting of the air conditioners, installing new UPVC window, making provisions for installing other furniture work, curtains, SS trolleys to be

installed in the kitchen, glass work, collapsible grills.

Since the aforesaid works to be carried out in the two flats prima facie appear to be tenantable works which would result in the flats of the Petitioner and the Respondent No.1 herein being made habitable, in my view, there should be no impediment in permitting the said work to be carried out subject to obtaining permission of the Municipal Corporation of Greater Mumbai. If the permission is not required for the said work, the MCGM can accordingly communicate to the Petitioner and the Respondent No.1.

7 The learned counsel appearing on behalf of the Respondent No.2 Society on instructions states that in so far as the works covered by clauses (i) to (iv) are concerned, the Respondent No.2 society has no objection to the said works being carried out. Hence the above Petition is disposed of by issuing the following directions :-

(i) The Petitioner and the Respondent No.1 are permitted to carry out the works covered by clauses (i) to (vi) as reproduced herein above in the flats in question subject to obtaining the permission of the MCGM.

(ii) If the permission is not required for the said work, the MCGM to accordingly communicate to the Petitioner.

(iii) The statement of the Learned Counsel for the Respondent No.2 society that the Respondent No.2 has no objection for the Respondent No.1 carrying

out the work covered by clauses (i) to (vi) is accepted. The Petitioner and the Respondent No.1 would not carry out any other work or undertake any structural changes in the flat in question.

(iv) In so far as the use of the staircase is concerned, the undertaking given in clause (4) of the affidavit filed by the Petitioner is accepted and it is reiterated that the Petitioner and the Respondent No.1 would not commission the use of the staircase till the dispute in the Co-operative Court is decided and will also secure the cavity which has been made in the slab between the first and second floor.

(v) The undertaking mentioned in clause (5) as regards the manner in which the cavity will be secured is also accepted.

(vi) The undertaking mentioned in clause(6) of the affidavit is also accepted.

(vii) The undertaking in clause (7) of the affidavit is also accepted and it is clarified that no change in the lay out plans of the flats would be carried out. If any such application is filed by the Petitioner and the Respondent No.1, the concerned Department of the MCGM to dispose of the same at the earliest.

(viii) The order passed by the Co-operative Court and the Co-operative Appellate Court would accordingly stand set aside and substituted by the instant order which would operate pending the dispute in question.

8 Rule in the above Petition is accordingly made absolute in the aforesaid terms with parties to bear their respective costs.

9 The Learned Counsel for the Petitioner states that the Writ Petition filed by the Respondent No.1 being No.4051 of 2015, raising the same challenge may also be disposed of in terms of the instant order. Hence the said Writ Petition No.4051 of 2015 to also stand disposed of in terms of the instant order.

10 The parties to act upon a copy of this order duly authenticated by the Court Shirestedar.

[R.M.SAVANT, J]