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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**APPEAL FROM ORDER NO. 258 OF 2015
ALONG WITH
CIVIL APPLICATION NO. 321 OF 2015
IN
APPEAL FROM ORDER NO. 258 OF 2015**

Mr. Modilal Bapna & Anr. ...Applicants/Orig. Appellants

In the matter between:

Mr. Modilal Bapna & Anr. ...Appellants

Vs.

M.C.G.M ...Respondents/Orig. Defendants

Mr. A.G. Damle, Sr. Advocate a/w.

Mr. V. Patil i/b. Sabina Shaikh for Appellants

Mr. A.V. Diwate for the Respondent No.1

**CORAM : MRS. ROSHAN DALVI, J.
DATED : 11TH SEPTEMBER, 2015**

P.C. :

Rule. Rule made returnable forthwith.

1. The ad-interim order has been granted pertaining to the suit structure in this appeal. The appeal is against the ad-interim order refusing ad-interim relief. The order does not show the reason, but only shows that the plaintiff has not made out a strong prima facie case.

2. The MMC has issued notice under Section 354 of the MMC Act. The entire building would be required to be pulled down as it is considered dangerous. Photographs of the MMC showing the building from outside do not show imminent danger. The Counsel on behalf of the MMC contends that the Structural Audit Report has been obtained. The MMC has not filed any affidavit-in-reply either to the notice of motion in the Bombay City Civil Court nor in this appeal. That would have to be shown to the plaintiff and considered by the Court. The plaintiff / appellant also claims that his own structural audit report has also been obtained. In fact the landlord has obtained a third structural report. Hence the matter requires consideration and amicable solution to the problem of danger and/or repair and/or reconstruction of the building between all the aforesaid parties.
3. Hence this is a fit case to grant ad-interim relief which would in effect set aside the ad-interim order refusing ad-interim relief dated 8th August, 2014 passed by the Bombay City Civil Court.
4. However the plaintiff / appellant who contends that the suit building or the suit structure is not dilapidated would take the risk of human lives in case the structure collapses contrary to the plaintiff's / appellant's structural audit report.

5. Hence the following order:

1. The MMC shall not demolish the suit structure in the suit building under the impugned notice issued under Section 354 of the MMC Act until the disposal of the notice of motion in the trial Court. The plaintiff / appellant who contends that the suit building or the suit structure is not dilapidated would take the risk of human lives in case the structure collapses contrary to the plaintiff's / appellant's structural audit report.
2. Appeal as well as civil application are disposed off accordingly.

(ROSHAN DALVI, J.)

CERTIFICATE

Certified to be true and correct copy of the original signed Judgment /order.