

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

**APPEAL FROM ORDER (ST.) NO. 28680 OF 2014
WITH
CIVIL APPLICATION (ST.) NO. 28681 OF 2014**

Mr. Moses Michael Gomes ... Appellant/Applicant.
V/s.
Mr. Velji Bhimshi Satra & Anr. ... Respondents.

Mr. S. K. Dubey for the appellant/applicant.
Mr. J.S. Kini for the respondent no.1.
Mr. Vinod Mahadik for respondent no.2 BMC.

**CORAM : K. K. TATED, J.
DATED : 27/01/2015.**

PC.:

. Heard learned Counsel for the parties.

2 This Appeal from Order is preferred by original plaintiff challenging the order dated 28.10.2014 passed by the Bombay City Civil Court at Bombay in Notice of Motion no. 3807 of 2014 dismissing the same.

3 The learned Counsel for the appellant submits that the respondent corporation granted the repairs permission in favour of respondent no.1 tenant without obtaining their no objections certificate. He submits that the respondent no.1 carried out unauthorised construction beyond the repairs permission dated

03.09.2014. Hence, respondent may be restrained from carrying out any further construction as per repairs permission granted by the Corporation dated 03.09.2014.

4 It is to be noted that in the present proceeding, the respondent no.1 filed their written statement in the Trial Court. In paragraph 2.18, the respondent no.1 original defendant no.1 submitted that substantial repairs work has already been carried out. The paragraph 2.18 reads thus:

“ 2.18. The defendant no.1 submits that substantial repair work has already been carried out and that all that is required to be done now is tenantable repairs, in the nature of affixing titles, furniture, electricity and other works including changing shutters, affixing doors etc.”

5 This fact considered by the Trial Court at the time of dismissing the appellant's Notice of Motion. Considering this fact, as respondent no.1 already carried out substantial repairs work as per the permission granted by the Corporation, at present I do not find any substance in the Appeal from Order.

6 Hence, same is rejected.

7 Liberty granted to the appellant to take out appropriate proceeding, if he so desires for taking action against respondents if they carry out unauthorised construction beyond the repairs permission dated 03.09.2014.

8 In view of rejection of Appeal from Order, nothing survives in the Civil Application.

9 Hence, Civil Application is rejected.

(K.K.TATED, J.)