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

WRIT PETITION NO.2409 OF 2013

Pathan Chawl (Shri Krishna Niwas) Seva Sangh	...Petitioner
v/s.	
The Municipal Corporation of Greater Mumbai and Ors.	...Respondents.

**WITH
CHAMBER SUMMONS NO.36 OF 2015
IN
WRIT PETITION NO.2409 OF 2013**

Pathan Chawl (Shri Krishna Niwas) Seva Sangh	...Applicant
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IN THE MATTER BETWEEN

Pathan Chawl (Shri Krishna Niwas) Seva Sangh	...Petitioner
v/s.	
The Municipal Corporation of Greater Mumbai and Ors.	...Respondents.
And	
M/s.Gundecha Enterprises and Ors.	...Proposed Respondents

Mr.Kirit J. Hakani, for the Petitioners.
 Mr.E.P.Bharucha, Senior Counsel a/w Ms.Shobha Ajitkumar, for the
 Respondent – BMC.
 Mr.Vaibhav Chheda i/b Bharucha & Partners, for the Respondent No.5.
 Mr.Vachan Bodke i/ Chitnis Vaity and Co., for the Proposed Respondent.
 Mr.Cyrus Bharucha i/b Maniyar & Srivastava, for the Intervenors.
 Mr.Anil Rao, for the Respondent No.4.

**CORAM: A. S. OKA &
REVATI MOHITE DERE, JJ.**

DATED : 29th JULY, 2015.

P.C.

1. The challenge in this petition under Article 226 of the Constitution of India is to the notices issued by the Mumbai Municipal Corporation under Section 354 of the Mumbai Municipal Corporation Act, 1888 (for the short 'the said Act of 1888'). There are conflicting opinions of experts placed on record as regards the structural stability of the building. Therefore, the disputed questions as regards the structural stability of the building are required to be decided in this petition. Very likely, the evidence of the experts will be necessary to determine the issue. The bar created under Section 515A of the Mumbai Municipal Corporation Act, 1988 is not applicable to a suit where action challenged is under Section 354 of the said Act of 1888. The bar is confined to the suits filed for challenging an action under section 351 or Section 354A of the said Act of 1888. Therefore, we propose to relegate the petitioner to a remedy of a suit.

2. In terms of the ad-interim order passed by this Court, the

petitioner has filed undertakings of 148 members of the petitioner/occupants of the building. To enable the petitioner to file a suit and to pray for appropriate ad-interim relief, we propose to continue the ad-interim relief for a reasonable time.

3. Accordingly, we dispose of the petition by granting liberty to the petitioner to file a civil suit. The ad-interim relief which is operative till today will continue to operate for a period of six weeks from today to enable the petitioners to move the Trial Court for grant of appropriate ad-interim relief. The undertakings of the members of the petitioner/occupants of the building which are tendered on record shall continue to bind the persons who have given the undertakings, till further order is passed by the Civil Court.

4. All contentions on merits are kept open.

5. Chamber Summons No.36 of 2015 does not survive and the same is accordingly disposed of.

(REVATI MOHITE DERE,J.)

(A.S. OKA,J.)