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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2732 OF 2014

M/s. Shreenath Associates

..Petitioner.

V/s.

State of Maharashtra and Ors.

..Respondents

Mrs. Jai Kanade i/by M/s.Markand Gandhi & Co. for the petitioner.

Mr. Vinod Mahadik for respondent nos. 2 to 8.

Mr. A.R. Shaikh i/by Mr. S.D. Mishra for respondent nos. 9, 11 and 16.

**CORAM : A.S.OKA AND
V.L.ACHLIYA, JJ.**

DATED : 29TH SEPTEMBER, 2015

P.C. :-

1. Yesterday, the submissions of the learned counsel for the petitioner were heard. On his request to enable him to take instructions, the petition was adjourned till today. Today a request for adjournment is made on the ground that the petitioner has engaged Mr. G.S. Godbole as a counsel. The counsel who argued the matter yesterday is not present today. Hence, no adjournment can be granted. The counsel who argued the matter yesterday, ought to have remained present. Such tactics adopted cannot be appreciated.

2. Considering the substantive prayer clause (a), issue is

whether the building in question can be repaired or whether its condition is so dangerous that it will have to be pulled down.

3. The disputed questions of fact arise in this petition as regards the structural status of the building which will require evidence of experts. In view of the order/report of Technical Advisory Committee dated 28th January, 2014, the notice under section 354 of the Mumbai Municipal corporation Act, 1988 can not be implemented as of today. In the prayer clause (b), the relief is sought in terms of section 16(1)(i) of the Maharashtra Rent Control Act, 1999. Such a relief can be granted only in a properly constituted proceedings before the Court of Small Causes.

4. Considering the fact that the disputed questions of fact are involved, we decline to entertain this petition under Article 226 of the Constitution of India. Accordingly the petition is disposed of. However, remedies of the petitioner before the appropriate Court are expressly kept open.

(V.L.ACHLIYA, J.)

(A.S.OKA. J.)

C E R T I F I C A T E

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