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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (STAMP) NO.65 OF 2016
WITH
CIVIL APPLICATION (STAMP) NO.66 OF 2016

Pathan Chawl (Shri Krishna Niwas) Seva Sangh	...Appellants
V/s.	
The Municipal Corporation of Gr.Mumbai & Ors.	...Respondents

Mr.Kirit Hakani for the Appellants.

Mr.A.V. Diwate for the Respondent No.1 – B.M.C.

Mr.Anil Rao for the Respondent No.5.

Mr.Karl Tamboley with Ms.Aditi Bhansali i/b Bharucha & Partners for the Respondent No.6.

Mr.Vanchan Bodke i/b Chitnis Vaithy & Co. for the Respondent No.7.

CORAM : R.D. DHANUKA, J.
DATE : 9TH FEBRUARY, 2016.

P.C. :-

1. By this appeal from order, the appellants have impugned the order passed by the learned trial Judge refusing to grant interim relief in the notice of motion filed by the appellants (original plaintiffs) *inter-alia* praying for injunction against the Municipal Corporation from implementing the notice issued under section 354 of the Mumbai Municipal Corporation Act, 1888 (MMC Act) and under various other

provisions of Act. The appellants have also sought various reliefs against the landlords in respect of the suit property.

2. Mr.Hakani, learned counsel appearing for the appellants invited my attention to the order dated 29th July, 2015, passed by the Division Bench of this Court in Writ Petition No.2409 of 2013 and would submit that the Division Bench of this Court having found that there were conflicting opinions of experts placed on record as regards the structure stability of the building which can be decided only upon the opinion of experts, the Division Bench of this Court relegated the appellants to file the civil suit keeping all the contentions on merits open. He submits that the structural stability report submitted by the appellants clearly indicates that the building only required some repairs and is not in dilapidated condition. He submits that the Technical Advisory Committee report was issued without considering the stability report submitted by the appellants. He submits that the landlords have not filed any separate suit for recovery of possession. The landlords have also not offered any alternate accommodation to the appellants.

3. It is submitted by learned counsel for the appellants that the learned trial Judge has already placed the matter on board for framing issues and he has no objection if the suit itself is heard expeditiously and *status-quo* order passed by the learned trial Judge

to continue till the disposal of the suit. He submits that the undertaking rendered by the appellants that they would continue to occupy the suit structure at their own risks will be continued by the appellants if *status-quo* order passed by the learned trial Judge is continued till the disposal of the suit.

4. Learned counsel appearing for the landlords and the Municipal Corporation on the other hand would submit that the order passed by the learned trial Judge dismissing the notice of motion for the reasons recorded therein was fully justified. It is submitted that since the building has been declared as C-1 category, no interference shall be made by this Court in the impugned order passed by the learned trial Judge and the *status-quo* order passed by the learned trial Judge shall not be continued. In the alternate, it is submitted that if this Court comes to the conclusion that the reports submitted by the Structural Engineer relied upon by all the parties are conflicting and inconsistent and the issue has to be decided on merits after leading oral evidence of the parties, it should be made clear by this Court that if any untoward incidents takes place, none of the respondents would be responsible in any manner whatsoever.

5. A perusal of the record indicates that the notices are issued by the Municipal Corporation from time to time under section 354 of the MMC Act. The appellants placed reliance on the structural

stability report submitted by the private limited company on the audit panel of the Municipal Corporation. On the other hand, the respondents placed reliance on the reports submitted by the Technical Advisory Committee appointed under the guidelines framed by this Court in Writ Petition (Lodging) No.1135 of 2014 dated 23rd June, 2014.

6. In view of the fact that the learned trial Judge has already placed the matter for framing issues and the contesting defendants have already filed their written statements and in view of the appellants having already rendered the undertakings, that they be allowed to stay in the suit premises at their own risks and costs during the pendency of the suit and in view of the fact that the landlords have not filed any suit for recovery of possession against the members of the appellants association, in my view the ends of justice would be met, if the following order is passed :-

i). The undertakings rendered by the appellants that if any untoward incidents took place in respect of the suit structures which are the subject matter of the notices issued by the Municipal Corporation under section 354 of the MMC Act to continue till the disposal of the suit. It is made clear that the respondents – landlords would not be prosecuted by the Municipal Corporation if any untoward incidents took place in the suit premises in view of the

appellants not having vacated the suit premises in response to the notice issued under section 354 and other relevant provisions of the MMC Act and the appellants solely will be responsible for the said untoward incidents, if any, taking place.

ii). The respondents who have not filed any written statement till date shall file their written statement within two weeks from today and a copy thereof shall be served upon the appellants' advocate simultaneously.

iii). Learned counsel appearing for the parties have rendered an undertaking before this Court that they will not seek any unnecessary adjournment before the learned trial Judge and will proceed with the trial in co-operation with each other and will co-operate with the learned trial Judge in expeditious disposal of the suit. The undertaking is accepted.

iv). The learned trial Judge shall make an endeavor to dispose of the suit expeditiously and not later than one year from today.

v). It is made clear that this Court has not expressed any views on the merits of the matter. All the contentions of all the parties are kept open.

vi). The learned trial Judge shall dispose of the matter on its own merits without being influenced by the observations made by the learned trial Judge in the impugned order.

7. The appeal from order is accordingly disposed of in aforesaid terms. The status-quo order passed by the learned trial Judge to continue till disposal of the suit. It is made clear that this order of continuation of the *status-quo* granted by this Court would not affect the orders already passed by this Court in Suit No.2612 of 2008 in which the respondent nos.5 and 6 herein are parties.

8. In view of the disposal of the appeal from order, the civil application does not survive and is accordingly disposed of. No order as to costs.

(R.D. DHANUKA, J.)