

Sequeira

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

*CIVIL APPLICATION NO. 318 OF 2016
in
SECOND APPEAL NO. 1050 OF 2004.
Along with
CIVIL APPLICATION NO. 319 OF 2016
in
SECOND APPEAL NO. 1051 OF 2004.*

Shri Pralhad Mahadeo Arbune. ... Applicant / Appellant
V/s.
Shri Tukaram Khashaba Borge
and anr. ... Respondents.

Mr.S.S.Kanetkar, for Applicant / Appellant in both C.A and Appeals.
Mr.A.M.Kulkarni, for Respondents in both Appeals.

*Coram : N.M. Jamdar, J.
Thursday 5 May, 2016.*

P.C. :-

The following order was passed on 22 April 2016.

'The learned Counsel for the Applicant states that even though various reliefs are sought in the present application, the Applicant at present is only desirous of carrying out certain necessary repairs to the property in question. The learned Counsel states that the list containing the details of the necessary repairs which according to the Applicant need to be carried out, will be furnished to the Respondent No.1 with a copy to the learned Counsel for Respondent No.1.

2. Stand over to 29 April 2016. The Respondent No.1 after receipt of such communication, will make his stand clear on the next date.

2. The learned counsel for the Applicant has given the list of urgent repairs to be carried out to the suit property. Since the suit property is being currently used as a restaurant / hotel and the customers visit the said place it is necessary that the same is kept in hygienic condition for their safety and health therefore, following repairs were permitted to be carried out by the Applicant. The learned counsel for the Respondents on instructions also states that he has no objection for the following repairs mentioned in the list.

- a. Building repairs – repair of parapet wall, waterproofing, shed over the staircase, plastering of internal and external walls of the buildings, plastering to slab and change of damaged tiles.
- b. Sign board of the Hotel and replacing plywood by granite in part of the door in front portion of the hotel.
- c. Repairing of drainage line.

3. As far as the car parking area is concerned, the learned counsel for the Respondents on instructions states that an area of 10 feet in width to approach the restaurant will be kept open by the Respondents.

4. The statements made by the counsel for the Respondents are accepted.

5. The Applicant has also sought repair to the exhaust chimney. Since

the restaurant is being run, repairs will be necessary, otherwise it will cause health problems for all concerned. The learned counsel for Respondents however submits that there exists no exhaust chimney. I have not permitted creation of a new exhaust chimney. The repairs will be carried out only if the exhaust chimney exists.

6. The learned counsel for the Applicant initially sought permission for replacing plywood fixed on the backside of the premises to replace it by a wooden door for the purpose of safety. The learned counsel for the Respondents submitted that instead of wooden door it will be better if the opening is sealed by a wall. On this suggestion, the learned counsel for the Applicant has not pressed this request.

7. As far as repair to the existing wooden door inside the hotel and fitting the new wooden door inside the premises of the hotel, the learned counsel for the Respondent has no objection.

8. The learned counsel for the Applicant then sought various other reliefs such as erection of the toilet. He submitted that he may be permitted to fit a temporary movable fibre toilet. It is not possible to grant this relief in the present Civil Application as no details as to where this movable toilet will be placed have been given. The Applicant can always take out an appropriate application in that regard.

9. As regards the permission sought from the landlord for erection of kitchen shed, godown shed, worker quarters shed, pan bidi shop, water

storage, W.C & bathroom for making an application to the municipal authorities is concerned, it is informed that the Suit under the Maharashtra Rent Control Act, 1999 is pending. The Applicant can always file an application in that Suit if it relates to the same premises.

10. Accordingly, the Civil Applications are disposed of in above terms by way of consensus between the parties, as recorded above in presence of their respective clients.

11. It is clarified that this arrangement is for the purpose of maintaining hygiene as noted above and it is without prejudice to rights and contentions of all the parties.

12. Place the Appeals which are of the year 2004 for 'directions' on 13 June 2016 where a suitable order for placing the matters on board for hearing can be passed.

(N.M. Jamdar, J.)