

## IN THE HIGH COURT OF JUDICATURE AT BOMBAY

**CIVIL APPELLATE JURISDICTION**

Appeal from Order (ST) NO. 10609 OF 2016  
WITH  
Civil Application (st)No.10612 OF 2016

Cornelian Properties Private Limited                      ...Appellant  
*Versus*  
1.Mr.Sudeep Mahendra Shah And Ors                      ...Respondents

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*Mr.A.S.Khandeparkar i/b. Mr.Amogh K.Karandikar, for the Appellant.*

*Ms.Rekha Safari, for the Respondents.*

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**CORAM:     G. S. KULKARNI, J.**

**DATED:       29<sup>th</sup> April, 2016**

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**PC:-**

Not on board, Taken on Board.

1.            This Appeal from Order arises from the Order dated 7<sup>th</sup> March,2016 passed by the learned Judge, City Civil Court at Mumbai in Notice of Motion No.214 of 2016 in L.C.Suit No.175 of 2016. By the impugned order, the Notice of Motion in question as filed by the Appellant-Plaintiff has been partly allowed by passing the following orders:-

- “1.    N/M.No.214/2016 is hereby partly allowed.
2.    Defendant Nos.1 and 2 are hereby restrained from raising any construction beyond sanction plan which is not a tenantable repairs.
3.    It is hereby made clear that defendant nos.1 and 2 can carry out tenantable repairs as contemplated under Section

342 of MMC Act.

4. So far construction of kitchen platform concerned it can be constructed with the permission of BMC and same will be subject matter of decision of the suit.

5. Defendant Nos.1 and 2 are hereby directed to file undertaking to the effect that they will not raise any permanent construction beyond the sanction plan and beyond scope of section 342 of MMC Act, undertaking should be filed within one week from today.

6. In above circumstances, no order as to costs.”

2. The only grievance as made by Mr.Khandeparkar, learned Counsel appearing for the Appellant is that the prayers of the Appellant in the Notice of Motion pertaining to the terrace attached to Flat No.801 which is subject of prayer clause (b) of the Notice of Motion has missed the attention of the learned Trial Judge in deciding the Notice of Motion. The learned Trial Judge has not decided on the relief as sought by the Appellant in respect of the terrace. Learned Counsel appearing for the Respondents-Defendant Nos.1 and 2 also would not dispute this position. She submits that Respondent Nos.1 and 2 would oppose such prayers and they have material to oppose such prayers which are sought on behalf of the Appellant in the Notice of Motion.

3. Taking into consideration the above position, it would be appropriate that the learned Trial Judge decides the grievance of the

Appellant-Plaintiff in regard to the terrace as prayed for in prayer clause (b) of the Notice of Motion. The parties are at liberty to file such further pleadings, if they so desire in regard to this issue, before the trial Court. The impugned order to that extent stands modified and to that extent the Notice of Motion in regard to the issue of terrace would also stand revived.

4. The Appeal From Order is accordingly disposed of with a direction that the learned Trial Judge would take up the Notice of Motion and hear the parties on prayer (b) of the Notice of Motion pertaining to the terrace. All the contentions of the parties on merits of the matter are expressly kept open. The Appeal From Order is accordingly disposed of in the above terms. No order as to costs.

5. In view of disposal of the Appeal from Order, the Civil Application would also not survive and same is disposed of.

**(G. S. KULKARNI,J.)**