

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1313 OF 2011
WITH
CIVIL APPLICATION NO. 5992 OF 2008
IN FIRST APPEAL NO. 1313 OF 2011

Tulsidas V. Patel Private Limited & another ... Appellants.

V/s.

Municipal Corporation of Greater Bombay
& another ... Respondents.

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Mr. Gaurav Joshi, Senior Advocate a/w Mr. S. V. Doijode & Ms. F. J. Thakkar i/b. Doijode Associates for the Appellants.

Mr. N. V. Walawalkar Senior Advocate a/w Mrs. M. R. Bhoir for the Respondent-Corporation.

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CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.
DATE : OCTOBER 17, 2016.

P.C.:

1. Amendment sought in terms of draft amendment is allowed. The appellants undertake to carry out the amendment within one week from today.
2. The affidavit of appellant No.2 dated 14th October 2016 is also taken on record.
3. Learned counsel for the appellants submits that appellant no.2 is an Administrator/Receiver of the assets of appellant No.1, having been appointed by orders dated 6th April 2009 and 17th April 2009 passed by this Court in Suit No.2435 of 2005.

4. Learned counsel for the appellants points out the report dated 13th October 2016 of M/s. Sterling Engineering Consultancy Services Private Limited. The said report is annexed to the affidavit at Exhibit "B".

5. Based on the said report of M/s. Sterling Engineering Consultancy Services Private Limited, learned counsel for the appellants submits that the appellants would appoint a Structural Engineer/Architect to carry out a thorough investigation of the pit and suggest solutions towards remedial measures to be taken *inter alia* to strengthen the basement/pit and proceed further with the construction and/or de-watering of pit so as to avoid water stagnation therein or such other remedial measures as may be required so as not to affect the safety, stability and health of the neighbouring residencies.

6. In view of the submissions therefore advanced by learned counsel for the parties, it is hereby ordered that a joint inspection of the suit spot will be conducted by the Structural Engineer to be appointed by the appellants and the concerned officers of the Municipal Corporation in respect of the remedial measures and other measures to be taken as stated above.

7. Such inspection will be undertaken after giving 72 hours' notice by the appellants to the respondent-Executive Engineer (Building and Proposal) and the Assistant Commissioner of the relevant wards and the Legal Department of respondent No.1.

8. The relevant suggestions made by the concerned officers from the Municipal Corporation will also be taken into consideration while the Structural Engineer submits the report.

9. Juhu Police Station to provide necessary assistance for carrying out the inspection of the suit spot.
10. On compliance of investigation, appellant No.2 to file the report of the Structural Engineer within six weeks from the date of this order before the learned Single Judge in Suit No.2435 of 2005 and seek appropriate directions, *inter alia*, based on recommendations of the Structural Engineer/Architect by joining respondent no.1 as party in such application for appropriate directions.
11. In the meanwhile, and until the final orders are passed in Suit No.2435 of 2005 on the report proposed to be filed by appellant no.2, respondent No.1 shall continue rendering of pesticides treatment presently being carried out on the property and the appellants to continue to reimburse the costs in respect thereof, as is being done.
12. Respondent No.1 shall also, at the cost of the appellants, take measures to remove the garbage and clean the pool water, if found necessary.
13. The ad-interim relief granted vide order dated 19th October 2011 to be continued till the necessary orders are passed in Suit No.2435 of 2005.
14. The First Appeal is accordingly finally disposed of. There shall be no order as to costs.
15. In view of disposal of the First Appeal, pending Civil Application No. 5992 of 2008 also stands disposed of.

(DR. SHALINI PHANSALKAR-JOSHI, J.)