

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

**APPEAL FROM ORDER STAMP NO.16365 OF 2016
WITH
CIVIL APPLICATION STAMP NO.16367 OF 2016**

**Juhu Ramesh Mahal Co-operative
Housing Society Ltd. and ors. : Appellants/Applicants.**

**Versus
The Municipal Corpora of Greater
Mumbai and ors. : Respondents.**

**Mr. G S Godbole a/w Mr. Zaid Ansari for the Appellants/Applicants.
Mrs. M R Bhoir a/w Mr. S K Sonawane for the Respondent Nos.1 and 2.
Mr. A G Damle, Senior Advocate a/w Mr. Abhishek Adke i/by Legasis
Partners for the Respondent No.3.**

**CORAM : R. M. SAVANT, J.
DATE : 17th June 2016**

P.C.

1 The above Appeal from Order challenges the order dated 09/06/2016 passed by the learned Judge of the City Civil Court, Dindoshi, Borivali Division, Mumbai by which order the ad-interim relief was refused to the Appellants/Plaintiffs in the Draft Notice of Motion filed by them.

2 In the Draft Notice of Motion the principal relief sought by the Appellants/Plaintiffs was to the following effect.

“That the time be extended for a period of 4 weeks from today with retrospective effect for filing the Structural Audit Report alongwith Proforma B in respect of the Suit building to the Defendant/M.C.G.M. And the Order dated 13/05/2016 expired on 05/06/2016 be extended with retrospective effect till further order.”

3 The cause for filing the said Notice of Motion and claiming the said relief was the order dated 13/05/2016 passed in the first Draft Notice of Motion moved by the Plaintiffs. The directions issued vide the said order could not be complied with in the matter of Plaintiffs submitting Structural Audit Report along with Proforma B in respect of the Suit building to the M.C.G.M. In so far as obtaining of such Structural Audit Report by the Plaintiffs is concerned, they had appointed one Lalit and Associates Structural Engineers to carry out the said exercise. However, the said Lalit and Associates could not inspect the flats which are belonging to and under the control of the Defendant No.3 and the said Lalit Associates have submitted the report on the basis of a truncated inspection of only 4 flats i.e. the flats other than those belonging to the Respondent No.3 herein.

4 On behalf of the parties, contentions were sought to be raised as regards on account of whose default the flats could not be inspected, it is not necessary for this Court to go into the said aspect, as the learned Senior Counsel appearing on behalf of the Respondent No.3 herein Shri A G Damle, on instructions of the representative of the Respondent No.3, fairly states that the Respondent No.3 is ready to offer the inspection of the said 17 flats to the said Lalit and Associates – Structural Engineers appointed by the Plaintiffs.

5 The impugned order has been passed rejecting the ad interim relief sought by the Plaintiffs only on the ground that the Plaintiffs have failed to abide by the directions as contained in the order dated 13/05/2016 passed in the first Draft Notice of Motion in the matter of taking inspection of the flats in question and submitting the Structural Audit Report to the MCGM.

6 The learned counsel appearing on behalf of the Appellants/Plaintiffs states that the Appellants/Plaintiffs would see to it that the flats are inspected on the date and time that would be fixed by this Court and that the Structural Audit Report would be obtained by the Appellants/Plaintiffs as would be directed by this Court and submitted to the MCGM.

7 In the light of the above, in my view, the following directions would meet the ends of justice.

[A] The Respondent No.3 herein i.e. the original Defendant No.3 would permit the inspection of 17 flats belonging to it or within its control on 22nd and 23rd June 2016. The Structural Engineers M/s. Lalit Associates appointed by the Plaintiffs would accordingly carry out the inspection on the said two dates.

[B] The Plaintiffs would submit the Structural Audit Report within a period of four weeks from 23rd June 2016 to the Municipal Corporation of Greater Mumbai so that the said report can be forwarded by the MCGM to the Technical Advisory Committee (TAC).

[C] Since the report on behalf of the Defendant No.3 has already been submitted to the MCGM, the Technical Advisory Committee would submit its report thereafter as early as possibly but not later than 8 weeks of the report of the Structural Audit made available by the Plaintiffs to the MCGM.

[D] It would be contingent upon the report of the Technical Advisory Committee that the Plaintiffs would decide whether to proceed with the instant suit by amending it or to file a fresh suit as they deem appropriate. If the report of the Technical Advisory Committee is adverse to the Plaintiffs, the Plaintiffs would be granted two weeks time to take appropriate steps.

[E] Till the Technical Advisory Committee's report is filed in the Trial Court, the MCGM would not act upon the notice dated 14/03/2016 and the order dated 05/05/2016 passed by the Designated Officer. However, it is made clear that the occupation of the building in question by the members of the Plaintiffs-Society would at their own risk as to costs and consequences and that the MCGM or the other authorities would not be held liable for any

untoward incident that may take place.

[F] The impugned order passed by the learned Judge of the City Civil Court would stand set aside and to be substituted by the instant order.

[G] With the aforesaid directions, the above Appeal from Order stands disposed of. In view of the disposal of the above Appeal from Order, Civil Application Stamp No.16367 of 2016 does not survive and the same to accordingly stand disposed of as such.

[R.M.SAVANT, J]