

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

**CIVIL APPLICATION (L) NO.31305 OF 2016
IN
APPEAL FROM ORDER NO.753 OF 20114
WITH
COURT RECEIVER'S REPORT NO.447 OF 2016
IN
APPEAL FROM ORDER NO.753 OF 20114
WITH
CIVIL APPLICATION NO.717 OF 2016**

The Society of St. Paul's Convent
High School ...Applicant
vs.
The Municipal Corporation of Greater Mumbai
& Anr. ...Respondents

Mr. Omkar M. Kulkarni for the Applicant.
Mr. Narayan Sahu i/b Mr. S. J. Pawar for Respondent No.2.
Ms. M. More for MCGM
Dr. M. S. Deshpande, Court Receiver a/w Mr. A. B. Malvankar, S.O.

**CORAM: G.S.KULKARNI, J.
DATE: 24th NOVEMBER, 2016.**

P.C.:-

. Heard Mr.Omkar Kulkarni, learned counsel for the Applicant and Mr.Narayan Sahu, learned counsel for the Appellant/Respondent No.2.

2. This Appeal was disposed of by an order dated 21/3/2016 passed by this Court. While passing the said order this Court had taken into consideration order dated 14/3/2016. Paragraph Nos.3, 4 and 5 of the said order reads thus:

“3. *In the impugned order, the learned City Civil*

Court Judge, at two places has recorded a categorical statement made by the learned counsel for the appellant that the appellant is ready to restore the structure. Mr. Soni, the learned counsel for the appellant on instructions from the appellant, who is present in the Court, states that the appellant is ready to abide by the notice. He states that however, the respondent/corporation and the private respondent are not permitting the appellant to do so.

4. *Mr. Singh, the learned Senior Advocate for the Municipal Corporation submitted that if the appellant abides by the notice issued the Municipal Corporation, they cannot have any objection. It is therefore not necessary to keep the appeal as well as the suit pending as the appellant is ready to abide by the impugned notice and the Municipal Corporation has no objection if the appellant abides by the same.*

5. *Accordingly by accepting the statement of the learned counsel for the appellant on instructions that the appellant will restore the suit structure to its original dimension as stated in the impugned communication dated 29 January 2008, Appeal from order can be disposed of.”*

3. Thereafter, by a further order dated 21/6/2016 passed on an application as filed on behalf of the Appellant/Respondent No.2 in this application seeking extension of time for restoring of the premises as per the order dated 21/3/2016 this Court granted extension up to 31/8/2016 to carry out the work in question for the reasons as set out in the said order. However, as there was no possibility of the work being completed by 31/8/2016, on behalf of the Appellant/Respondent No.2 another application was moved before this Court. This Court took into consideration various issues inter se arising between the parties in regard to the restoration of the structure and by order dated 22/8/2016, the office of the Court Receiver was directed to appoint some responsible officer to supervise the restoration work as directed by order dated

21/3/2016. It was also observed that if the Receiver requires assistance of police, he may request for the same to the nearest police station.

4. Thereafter, it is not disputed that under the supervision of the representative of the Court Receiver work of restoration was completed by the Appellant/Respondent No.2. The report to that effect dated 17/11/2016 is placed on record on behalf of the Court Receiver. Paragraph 6 of the said Report reads as under:

“6. Accordingly, the said restoration work was carried out by the Appellant during the period from 1st November, 2016 to 7th November 2015 in presence of the representative of the Court Receiver. However, the Representatives of the Respondent No.1 were not present at the site regularly, but they visited once in a day and inspected the work to their satisfaction. The PTA member of St. Paul Girls School were present at site during the entire period raising various objections to the said work. They also created obstructions and tried to stop said work. They also threatened the representative of the Court Receiver. When they requested to give their objections in writing, they refused to give the same the respondent No.2 was also not agreed for same. The Inspector of Police (Crime), however, provided adequate police assistance during the entire period in order to carry out the work smoothly. After completion of the said work, the representatives of Court Receiver submitted their detailed site report dated 15th November 2016 mentioning all above facts. Hereto annexed and marked as Exhibit 'C' is a copy of the site report dated 15th November, 2016 submitted by the Representatives of the Court Receiver. In view of the above, the Court Receiver submits that report towards compliance of the Order dated 22/8/2016 and further order dated 17th October 2016. The Court Receiver respectfully seeks following directions in the matter.

a) As the directions of the Hon'ble Court are complied with, the Court Receiver, High Court Bombay may be discharged without passing account and subject to the Cost,

charges and expenses.

b) The cost of the representatives of the Court Receiver may be quantified;

c) Any other directions this Hon'ble Court may deem fit and proper.”

5. Accordingly, the Receiver has prayed for directions that the Court Receiver be discharged without passing account and subject to the Cost, charges and expenses.

6. The report of the Court Receiver is taken on record and marked “X” for identification.

7. The grievance of the Applicant in the Civil Application is that the restoration work under orders of the Court is not undertaken as specified, though certain statements are made before the Court, which are recorded in the order dated 17/10/2016. The appeal was again moved on Court Receiver's Report No.414/2016. This Court by an order dated 17/10/2016 for the reasons recorded therein permitted restoration of the work to be undertaken and observed in paragraph 9 of the said order that the restored structure will not come on the property of Respondent No.2 and also that the height of the restored structure will also be according to the plan of the Municipal Corporation a statement in that regard on behalf of the Appellant/Respondent No.2 came to be recorded. The grievance of the applicant in this application is that in undertaking restoration of the structure the Appellant/Respondent No.2 has not restored the suit structure in accordance with the plans as approved by the Municipal Corporation and has in fact has encroached on certain areas belonging to the Applicant. It is submitted that the restoration under the orders of this Court cannot be used for the purpose of

taking away the area of the applicants and or encroach upon the same. This assertion of the applicant is opposed by learned counsel on behalf of the Appellant/Respondent No.2. The applicant therefore has moved this application inter alia seeking a direction that the Appellant/Respondent No.2 be directed to remove the encroachment on the property of the Applicant and carry out restoration work as originally existing suit structure. It is further submitted that the Appellant/Respondent No.2 has committed breach of the orders of this Court.

8. I have heard Mr.Omkar M. Kulkarni, learned counsel for the Applicant and Mr. Narayan Sahu i/b Mr. S.J. Pawar, learned counsel for the Appellant/Respondent. I have also perused the report of the Court Receiver, which is taken on record

9. Considering the nature of grievance, it is not possible for this Court to entertain the prayers of the Applicants as made in this Civil Application. It is for two reasons firstly, that the restoration work is completed and that the claim of the Appellant/Respondent No.2 is that it is done in accordance with the plans of the Municipal Corporation. If at all there is any issue as regards encroachment by the Appellant/Respondent No.2 in undertaking restoration then surely the applicant would have a legal remedy to assert the said contention in appropriate proceedings . Further if any deviation in restoring the suit structure as alleged by the Applicant is found out, then the Applicant is not precluded from approaching the Competent Authority for seeking necessary action against the Appellant/Respondent No.2 or initiating appropriate proceedings as permissible in law.

10. It is not possible for this Court to undertake a factual inquiry in this application and test the rival contention of the parties on this issue. The contention that the restoration work has been undertaken under the supervision of the Court Receiver and therefore in view of the report of the Court Receiver the applicant would not be in a position to assail the illegalities of the Appellant/Respondent No.2 in undertaking restoration also cannot be accepted. The Court Receiver was appointed only for a specific purpose that the restoration work is undertaken smoothly and that there is no law and order problem, as there is a school in question where students are taking education. It is for this solemn reason why the Court thought it appropriate to appoint a representative of the Court Receiver.

11. In view of the above observations prayers in the said application cannot be entertained. The Applicant is at liberty to pursue appropriate proceedings as permissible in law to agitate its grievance. As the work of restoration is completed it is appropriate that the Court Receiver is discharged in terms of prayer clause (a) and (b) of the report of the Court Receiver. Cost of the Representatives of the Court Receiver is quantified at Rs.15,000/-

12. All contentions of the parties on merits are expressly kept open. Civil Application (L) No.31305/2016 is disposed of in the above terms. No costs.

13. Civil Application No.717/2016 would also not survive and, is accordingly disposed of. Copies of the report of the Court

Receiver be provided to the parties.

(G.S.KULKARNI, J.)