

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.412 OF 2015
IN
CIVIL REVISION APPLICATION NO. 138 OF 2010**

Tribhuvan Tulsiram	..Applicant
Vs.	
Agnes d/o Andrew Mathews & Ors.	..Respondents

Ms Pratibha Shelke i/b Mr. P. J. Thorat for the Applicant
Mr. David Joseph i/b M/s David & Associates for the Respondents

CORAM : R. M. SAVANT, J.
DATE : 4th FEBRUARY, 2016

P.C.

1 The above Civil Application has been filed for the following relief:

(a) That by an order of this Hon'ble Court, the Respondent be directed to permit the Petitioner and his Contractors / Labour / Workers to remove the temporary roof of the shed constructed by the Respondents on rear side of suit premises and to give access to the Applicant and his Contractors / Labour / Workers to the shed constructed on the rear side of the suit premises in order to carry out tenantable repairs to the balcony of first floor, drainage pipeline and drainage chamber.

2 The above Civil Revision Application has been filed against the judgment and order dated 18-7-2009 passed by the Appellate Bench of the Small Causes court, by which the decree passed by the Trial Court was set aside and the Suit was dismissed. The above Civil Revision Application is pending hearing and final disposal. The relief sought by the above Civil

Application is sought on the ground that if the tenantable repairs to the balcony are not carried out then the balcony which is situated on the first floor is likely to collapse thereby endangering life and property. The Applicant is therefore seeking directions that the Respondents i.e. the Defendants to the Suit be directed to give access to the Applicant's contractors, and workers so as to remove the temporary roof shed constructed by the Respondents so as to access the balcony.

3 To the above Civil Application an affidavit in reply has been filed by the Respondent No.1 which is dated 17-9-2015. It has been stated in the said reply that the said balcony on the first floor of the rear side of the suit premises has collapsed in the year 1986 and till the filing of the above Civil Application no attempt has been made to repair and restore the same to its original position. It is further stated that the Applicant who is the landlord has failed and neglected to carry out the structural audit of the suit building as mandated by the Municipal Corporation. In so far as the cleaning of the drainage is concerned, it has been stated that there is no evidence submitted in the form of complaints from the occupants of the adjoining building as regards the flow of drainage. It has further been stated that in the garb of carrying out repairs to a non existent balcony which had already collapsed in the year 1986 the Applicant is intending to construct a new balcony which would increase the load on the already dilapidated and dangerous building. It has lastly been

stated that the building is in existence for more than 100 years and the attempt is to remove the tin shed of the Respondents on rear side without any obligation on the part of the Applicant for reconstructing the same.

3 The Learned Counsel appearing on behalf of the Applicant Ms Shelke sought to assure the Court that the Applicant would after carrying out the repairs reconstruct the shed and that the shed is an impediment for carrying out the repairs.

4 Per contra the Learned Counsel appearing for the Respondents Mr. David would reiterate the case of the Respondents in the affidavit in reply and would contend that the relief sought vide the above Civil Application is merely an attempt or ruse to remove the shed which in fact was the basis on which the Suit was filed for eviction on the ground of additions and alterations. The Learned Counsel would contend that the building in question being more than 100 years old is necessary to seek a structural stability report of the building for which the Respondents are ready to bear the expenses. The Learned Counsel lastly contend that a Structural Engineer on the panel of this Court be appointed so as to give a report about the structural stability of the building.

5 Upon this the Learned Counsel for the Applicant was asked as to whether the Applicant is ready for the appointment of a Structural Engineer so

that the report can be obtained as regards the structural stability of the structure in question, which having regard to the nature of the repairs sought to be carried out was very important. However, the Learned Counsel Ms Shelke on instructions of the Applicant states that the Applicant is not agreeable to the appointment of any Structural Engineer and his report being obtained.

6 I am afraid, in the light of the stand taken by the Applicant it is not possible to grant the relief sought vide the above Civil Application. The said stand in a way is indicative of the real intention of the Applicant in filing the above Civil Application and seeking the relief that is sought. The apprehension expressed by the Learned Counsel for the Respondents is therefore not without basis. Hence no relief can be granted. The Civil Application is accordingly rejected.

[R.M.SAVANT, J]