

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

APPEAL FROM ORDER NO.251 OF 2015

WITH

CIVIL APPLICATION NO.316 OF 2015

IN

APPEAL FROM ORDER NO.251 OF 2015

Shri. Mohammad Yunus Ansari

and another

.. Appellants/Applicants

Versus

The Municipal Corporation of Greater

Mumbai and others

.. Respondents

**Mr. S. J. Chourasia i/by Ashoka Law Firm for the Appellants/
Applicants.**

Mr. A. V. Diwate for the Respondent Nos.1 & 2.

Mr. R. A. Shaikh for the Intervenor.

CORAM : R.M. SAVANT, J.

DATE : 16th JUNE 2016

PC.

1. The above Appeal from Order takes exception to the order dated 10.09.2014 passed by the Learned Judge of the City Civil Court, Greater Mumbai, by which order, the Notice of Motion No.3274 of 2014 filed by the Appellants/original Plaintiffs came to be dismissed.

2. In the said Notice of Motion, the Plaintiffs had sought reliefs

that the Respondent No.1 i.e. the Municipal Corporation of Greater Mumbai (For short "MCGM") should be restrained from taking any action in pursuant to the impugned notice dated 17.07.2014 issued under Section 351 of the Mumbai Municipal Corporation Act (For short "MMC Act"). The said notice was founded on the site visit which was made pursuant to the complaints received in respect of the structure put up by the Appellants/Plaintiffs. It was the case of the Plaintiffs that they are in occupation of premises admeasuring approximately 200 sq.ft. which consists of one room with attached WC and a loft. It was the case of the Plaintiffs that since the structure had become old the Plaintiffs have carried out minor tenantable repairs as the structure was affected due to heavy rain in the monsoon of the year 2015. It was the case of the Plaintiffs that they had carried out tenantable repairs with the permission of one Vijay representative of the Defendant No.3 and since there was urgency in carrying out repairs that they had not informed the other Defendants. The MCGM appeared in the suit and filed its reply and contended that the Plaintiffs have carried out illegal construction without any sanction from the Defendants. It was stated that the suit premises were inspected on the basis of the complaint received by the MCGM and when called upon to do so, the Plaintiffs refused to submit relevant documents. The Trial Court considered the said Notice of Motion and has

by the impugned order dismissed the same.

3. The Trial Court tested the case of the Plaintiffs that they had obtained the permission of the landlord. The Trial Court adverted to the reply given by Advocate Vijay M. Sampat on behalf of the landlord to the Assistant Engineer (B/F) 'D-Ward' (Designated Officer-I) which was pursuant to the notice received by the landlord. The Trial Court has adverted to the fact that in the said reply it has been stated that the landlord had not given any permission otherwise to any persons or person in respect of carrying out any construction which is the subject matter mentioned in the letter under reply. The Trial Court also relying upon the photographs came to a prima-facie conclusion that the alleged repairs could not be said to be tenantable repairs. The grievance of the adjoining tenant was also noted. The Trial Court observed that it is on account of increase in the height of the loft that the water from the roof of the Plaintiffs house started entering into house of the said tenant through the window. The Trial Court thereafter on the ground that the Plaintiffs had failed to obtain permission from the concerned authorities as also the landlord has dismissed the Notice of Motion.

4. The Learned Counsel appearing on behalf of the Appellants/ Applicants sought to question the reliance placed by the Trial Court on the

reply of the landlord to the notice under Section 351. It was the submission of the Learned Counsel that the said reply does not appear in the documents on which the MCGM was relying upon.

5. In my view, the matter has to be considered in the context of the fact that a copy of the said notice under Section 351 was also marked to the landlord. Pursuant to which, reply by the said Advocate Vijay M. Sampat was given, wherein it was unequivocally stated that no permission was given to repair the structure either in writing or orally by the landlord to any person. The Appellants /Plaintiffs have not produced any authorisation from the MCGM permitting them to carry out repairs especially having regard to the fact that prima-facie there appears to be an increase in the height of the structure. Hence, there is no merit in the Appeal from Order. The same is accordingly dismissed.

6. In view of the dismissal of the Appeal from Order, the Civil Application does not survive and to accordingly stand disposed of as such.

[R.M. SAVANT, J]