

Atul

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 296 OF 2014
WITH
CIVIL APPLICATION NO. 348 OF 2014
AND
APPEAL FROM ORDER NO. 300 OF 2014

Jagannath B Agarwal & Ors	...Appellants
<i>Versus</i>	
The Municipal Corporation of Greater Mumbai & Anr	...Respondents

Mr SS Deshmukh, *for the Appellant.*
Mr Rakesh Agrawal, *for the Respondent-Trust.*
Mrs Madhuri More, *for the Respondent-MCGM.*

CORAM: G.S. PATEL, J
DATED: 3rd July 2017

PC:-

1. The challenge is to an order dated 24th January 2014 dismissing the Plaintiffs' Notice of Motion. The Plaintiff sought to restrain the Municipal Corporation of Greater Mumbai from taking action pursuant to a notice under Section 314 of the Mumbai Municipal Corporation Act. The other Defendants are the landlords. The Trial Court held *inter alia* that the portion of the structure sought to be protected fell within the regular road line.

2. There was no dispute as to the structural condition of the building.
3. It is today agreed that the building has now been declared as “C1” category dilapidated building. Nothing remains in the Appeal. The Suit itself has progressed to the stage where the Plaintiff has filed his evidence.
4. In this view of the matter, both the Appeals are dismissed as withdrawn. There will be no order as to costs.
5. The suit will be decided on its merits uninfluenced by the order under Appeal. All contentions are left open.
6. It goes without saying that since the structure is now declared as a “C1” category structure, the prevailing policy following the Division Bench judgment will operate and the necessary undertakings will have to be given by the Plaintiffs that if they continue in occupation they do so at their own risks and will not hold the Municipal Corporation of Greater Mumbai liable, and further, that the Appellants themselves will be liable in damages for any loss caused.
7. At this stage, a statement is made by the learned Advocate for the Appellants/original Plaintiffs that they are prepared to vacate. He makes a statement that the Plaintiffs will vacate their premises without prejudice to their rights and contentions on or before 4th

August 2017. The statement is accepted as an undertaking to the Court.

8. During the course of demolition the Appellants will be entitled to remove their articles and personal belongings from the commercial shop premises.

9. Both the Appeals are disposed of in these terms with no order as to costs.

10. The Civil Application does not survive and is disposed of as infructuous.

(G. S. PATEL, J)