

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 846 OF 2014
WITH
CIVIL APPLICATION NO. 1024 OF 2014**

Bernadette Dias & Ors ...Appellants
Versus
Municipal Corporation of Greater Mumbai & Ors ...Respondents

Mr Pradeep Thorat, *for the Appellants.*
Mr Anil Sakhare, **Senior Advocate**, *a/w Mrs Madhuri More, for*
Respondent No. 1-MCGM.
Mr Albert Henriques, *CA for Respondent No. 2, present.*
Mr Shailendra Singh, *i/b JP Consultia for Respondent No. 2.*

CORAM: G.S. PATEL, J
DATED: 21st June 2017

PC:-

1. The appeal is directed against an order dated 11th August 2014 dismissing the plaintiffs' notice of motion.
2. The plaintiffs challenged a notice under Section 354 of the Mumbai Municipal Corporation Act 1888. The Plaintiffs claim to be tenants of a 1000 sq. ft house No. 467A on final plot no. 559 of TPS-III at Mahim. This is a flat on the ground floor of a ground and first floor structure called Rail View Bungalow, opposite Mahim Railway

Station. Next to it is another building owned by the same landlord. This is called Rail View building. This is a ground plus three floors. That structure is dilapidated. The owner was directed to remove the first floor of Rail View Bungalow. That was not done. It seems that a water tank on terrace of the adjacent Rail View Building fell on the Rail View bungalow and damaged it.

3. In the meantime, there are pending disputes between the 2nd defendant/landlord and the plaintiffs regarding the latter's tenancy. the landlord disputes that the plaintiffs are tenants. Their tenancy has been terminated. There is a pending civil revision application.

4. The plaintiffs obtained ad-interim relief on 22nd August 2014 in this appeal. It has continued for three years. Mr Thorat states that the suit in the meantime has progressed to trial. The plaintiffs are being cross-examined. The plaintiffs have also given necessary undertakings agreeing to occupy these premises at their own risk and agreeing that they alone are liable should there be any loss or damage.

5. I have little choice but to continue the ad-interim protection previously granted pending the final hearing of the suit. The trial court is requested to dispose of the suit at the earliest.

6. It is open to the MCGM to move with a fresh notice and in accordance with law if it finds that there is further structural distress or damage. The fact that the suit is pending, and that this ad-interim

protection is granted, will not prevent the MCGM from acting afresh, if changed circumstances so warrant.

7. It is also clarified while this order disposes of the appeal, the interim order challenged in the appeal has not been set aside on merits. It is only the passage of time that has rendered the appeal itself infructuous.

8. The appeal is disposed of in these terms. The civil application does not survive and is infructuous. There will be no order as to costs.

(G. S. PATEL, J.)