

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

**APPEAL FROM ORDER st. NO.22675 OF 2017
with
CAA (STAMP) NO.22676 OF 2017
IN
APPEAL FROM ORDER st. NO.22675 OF 2017**

Shri Nitin M. Chandarana & Ors. ... Appellants

Vs.

Municipal Corporation of Greater Mumbai & Ors. ... Respondents

Mr.Mayur Khandeparkar with N.G. Samat and Sandeep mahadik
for the Appellants

Mrs.Madhuri More for Respondent – Corporation

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: AUGUST 14, 2017**

P.C. :

1. This Appeal from Order is directed against the order dated 29.7.2017 passed by the learned adhoc Judge of the City Civil Court, Dindoshi, Mumbai in the draft Notice of Motion No.____ of 2017 in Suit No.2127 of 2017. The appellants/11 plaintiffs have challenged the notices dated 3.6.2017 issued u/s 353 of the Mumbai Municipal Corporation Act and further notice dated 22.7.2017 u/s 354 of the Mumbai Municipal Corporation Act.

2. Heard the learned Counsel for the parties.
3. Perused the order passed by the learned Judge of the City Civil Court. The learned Judge has given reasoning justifying the ad-interim injunction. However, it does not disclose that the report of the structural inspection conducted by the Engineers of the Mumbai Municipal Corporation on 20.7.2017 was placed before the trial Court. The learned Counsel for the Corporation has submitted that the said report was not placed before the trial Court. The trial Court has given a finding based on the structural report submitted by the owner of the building. However, it is necessary for the Court to verify whether the Corporation prior to issuing the notice u/s 354 has arrived at an objective conclusion and whether it is based on an independent and objective finding, which is relying on its own inspection report.
4. Reliance is placed by the learned Counsel for the appellant on the ratio laid down in the case of **Gajanan Ramraoji Ambagovind & Ors. vs. Corporation of the City of Nagpur & Ors.**¹

¹ 206(4) Mh.L.J. 789

5. I am informed that the learned trial Judge has kept the matter for reply of the Corporation on 21.9.2017. The learned Counsel for the Corporation has submitted that the affidavit in reply will be filed by the Corporation on that day. However, she expressed an apprehension that the condition of the building is very bad and as it is dilapidated, it is risky not to demolish the said building. The learned Counsel for the appellants has submitted that all the 11 appellants have given individual undertaking that they are occupying their respective galas which are the suit premises on their own risk.

6. In view of the undertaking and the submissions made by the learned Counsel for the Corporation, the following order is passed:

- i) The order of the trial Court dated 29.7.2017 is hereby set aside.
- ii) The affidavit in reply is to be filed by the Corporation in the trial Court on or before 21.9.2017. Thereafter, within 3 days, the appellant may file rejoinder, if any, and the trial Court to proceed with the matter and decide the same by 6.10.2017.

iii) The trial Court to decide the case on merits as this Court has not expressed any view on merits.

iv) Till 6.10.2017, the Respondent Corporation not to take any coercive action.

v) This order is passed qua the present appellants only.

7. Appeal from Order is disposed of accordingly.

8. In view of the disposal of the Appeal from Order, Civil Application also stands disposed of.

(MRIDULA BHATKAR, J.)