

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

**APPEAL FROM ORDER (ST) NO.29254 OF 2017
WITH
CIVIL APPLICATION (ST) NO.29257 OF 2017
IN
APPEAL FROM ORDER (ST) NO.29254 OF 2017**

Mr. Dhanji Tokarshi Shah & ors

... Appellants

VS

Municipal Corporation of Gr.Mumbai & ors

... Respondents

**WITH
APPEAL FROM ORDER (ST) NO.29262 OF 2017
WITH
CIVIL APPLICATION (ST) NO.29263 OF 2017
IN
APPEAL FROM ORDER (ST) NO.29262 OF 2017**

Mr.Dhirajlal Shah & Anr.

.. Appellants

VS

Municipal Corporation of Gr.Mumbai & ors

.. Respondents

**WITH
APPEAL FROM ORDER (ST) NO.29264 of 2017
WITH
CIVIL APPLICATION (ST) NO.29265 OF 2017
IN
APPEAL FROM ORDER (ST) NO.29264 of 2017**

Mrs. Nirmala Premji Shah & ors

.. Appellants

VS

Municipal Corporation of Gr.Mumbai & ors.

.. Respondents

WITH
APPEAL FROM ORDER (ST) NO.29268 OF 2017
WITH
CIVIL APPLICATION (ST) NO.29269 OF 2017
IN
APPEAL FROM ORDER (ST) NO.29268 OF 2017

Mr. Richard Rodrigues & Ors. .. Appellants

VS

Municipal Corporation of Gr.Mumbai & ors .. Respondents

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Mr. Prashant P.Chavan I/b Mr.Ravindra R.Chile for Appellants in all AOs

Mrs.Madhuri More for Respondent no.1 /Corporation.

Mr.Kirti Munshi a/w Mr.Amit Bhave a/w Mr.Vinod Sakpal i/b Milan Bhise & Co for Respondent no.2.

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CORAM : MRS.MRIDULA BHATKAR J
DATE : 13 OCTOBER 2017

P.C.

1. In these Appeals, the order dated 25.09.2017 passed by the learned Ad-hoc Judge, City Civil Court, Borivali Div., Dindoshi, Mumbai, in Notice of Motion No. 2752 of 2017 in Suit No. 2330 of 2017, Notice of Motion No. 2754 of 2017 in Suit No. 2332 of 2017, Notice of Motion No. 2755 of 2017 in Suit No. 2333 of 2017 and Notice of Motion No. 2753 of 2017 in Suit No. 2331 of 2017 is under challenge.

2. The respondent-Municipal Corporation has given notices under Section 354 of the Mumbai Municipal Corporation Act, as the building nos. 11, 5, 10 and 12 are occupied by the appellants/plaintiffs, who are the tenants, in the said buildings. This is an usual conflict between the tenants, landlords and the developers.

3. In this case, the respondent/Municipal Corporation has secured the inspection report in respect of the structural stability of the suit buildings, which was carried out by the Executive Engineer, "H"East Ward Office. While hearing the submissions of both the sides, it is found that the appellants/tenants have also moved an application before the trial Court. In these Notices of Motion, they have prayed that they be allowed to appoint the authorized Structural Engineer to conduct the Structural Audit of the said buildings, as they have disputed the Inspection Report of the respondent/ Municipal Corporation.

4. I am informed by the learned counsel of both the sides that the appellants/plaintiffs have filed the Review Petition before the trial Court.

5. In view of the direction given and the ratio laid down in ***Writ Petition (L) No. 1135 of 2014*** in the case of ***Municipal Corporation of Greater Mumbai Vs. State of Maharashtra and ors.*** decided on **23.06.2014**, I am of the view that it is averred to allow the

appellants/tenants to conduct the structural audit by the authorized Engineer/ Architect of their choice and the said report is to be submitted before the Municipal Corporation. Hence, with the following order, Appeals are disposed of accordingly.

ORDER

(i) Operative part no. 1 in the impugned order dated 25.09.2017 is hereby set aside.

(ii) The appellants/plaintiffs are allowed to carry out the structural audit of the suit buildings by appointing the authorized Engineer/ Architect of their choice within a period of one month and thereafter, the authorized Engineer/ Architect shall submit a report to the Municipal Corporation within a period of two weeks.

(iii) The Municipal Corporation shall take steps as per the direction given in Writ Petition No. 1135 of 2014.

(iv) Parties to appear before the trial Court on 29.11.2017. Till then, parties to maintain status quo.

6. In view of the disposal of the Appeals, nothing survives in the Civil Applications and the same are disposed of as such.

7. It is submitted by the learned counsel for the appellants that they are residing in the suit buildings on their own risk. The appellants to submit an undertaking before the trial Court on 25.10.2017 in respect of demolition of the suit buildings.

(MRIDULA BHATKAR, J.)