

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**APPEAL (LODGING) NO.327 OF 2017
IN
NOTICE OF MOTION NO.1167 OF 2016
AND
NOTICE OF MOTION (LODGING) NO.2165 OF 2016
IN
SUIT NO.1930 OF 2009
ALONG WITH
NOTICE OF MOTION (LODING) NO.1854 OF 2017**

**Ajay Kumar Sohanlal Jhuria : Appellant/Org.Def.No.2/Applicant
versus
Umarani Durgaprasad Poddar
and ors. : Respondents.**

**Mr. R D Soni i/by Mr. Niranjan Simpi for the Appellant/Applicant.
Mr. Farhan Dubash a/w Mr. Praveer Shetty i/by Res Legal for the
Respondent Nos.3 to 5.
Mr. P S Dani, Senior Advocate a/w Mr. Vismay Shroff and Mr. D V Deokar
and Ms. Jaylaxmi Gaud i/by M/s. Parimal K Shroff & Co. for the
Respondent Nos.6 and 7.
Mr. K R Bulchandani i/by Zohair and Co. for the Respondent No.9.
Mr. P G Lad for the MHADA.**

**CORAM : R. M. SAVANT &
SARANG V KOTWAL, JJ.
DATE : 08th November 2017**

P.C.

1 The above Appeal takes exception to the order dated 13/07/2017 passed by a learned Single Judge of this Court by which order the Minutes of Order dated 02/05/2016 were clarified as sought by the praecipe dated 08/07/2017 filed by the original Defendant Nos.6 and 7 i.e. the Respondent Nos.6 and 7 herein.

2 It is not necessary to burden this order with unnecessary details. Suffice it would be to state that in the above pending Suit which has been filed claiming ownership on the basis of the title and wherein the main contest is between the Plaintiff and the Defendant Nos.2 and 9, the Defendant Nos.6 and 7 who are running a school known as Greenlawns School, which is situated in the property which is the subject matter of the suit, filed Notice of Motion No.1167 of 2016 seeking permission to carry out repairs to the building on which the said school is situated. The record discloses that the said Notice of Motion was heard over a period of time and ultimately the parties drew up Minutes of Order and agreed for the Notice of Motion being disposed of in terms of the said Minutes of Order.

3 In the context of the present Appeal it is required to be noted that the said Minutes of Order provided for the appointment of one M/s. Shetgiri and Associates as Architects for carrying out and the supervision of the necessary repair work of the suit property which appointment was by the consent of the parties. The said Notice of Motion accordingly came to be disposed of in terms of the said Minutes of Order. Thereafter a further order dated 29/07/2016 came to be passed by a learned Single Judge of this Court by which the glitches coming the way of the repair work being carried out were sought to be removed. It has been recorded in the said order that the MHADA would give its NOC to carry out the said repairs within 7 days from the receipt

of the said application. As also a statement came to be recorded of the learned counsel appearing for the Defendant Nos.1 and 2 that the Contractor shall be allowed to carry out the repair work. It seems that the plans submitted for repairs by the said M/s. Shetgiri and Associates were not being processed by the Municipal Corporation for Greater Mumbai (for short "MCGM), as they were not signed on behalf of the owners and that the other objections which according to the Defendant Nos.6 and 7 were not germane to the repairs being carried out were sought to be raised on behalf of the Municipal Corporation of Greater Mumbai, that a praecipe came to be filed on behalf of the Defendant Nos.6 and 7 for clarification of the said Minutes of Order dated 02/05/2016. Suffice it would be to state that the learned Single Judge after observing the conduct of the authorities viz. the MHADA and the Municipal Corporation of Greater Mumbai issued the clarification which is contained in paragraph 9 of the impugned order dated 13/07/2017. The learned Single Judge issued a direction to the Municipal Corporation of Greater Mumbai to grant permission to Mr. Shetgiri of M/s. Shetgiri and Associates on or before 18th July 2017 to carry out the repairs applied for by Mr. Shetgiri without insisting on the signature/s of the owner/s of the suit premises on the Application for repair works. This was done by the learned Single Judge in view of the fact that the issue as to the ownership of the suit premises is to be decided in the above Suit.

4 The Appellant i.e. the original Defendant No.2 seeks to take exception to the impugned order in the background of the letter dated 12/12/2016 of the said M/s. Shetgiri and Associates. An exception is also taken to the said order on the ground that though what was contemplated by the said Minutes of Order were only the repairs. The said Architect M/s. Shetgiri and Associates have in the said letter mentioned 3 stages in which the repairs are to be carried out which was never in contemplation when the said Minutes of Order were filed. The said 3 stages as contained in the letter dated 12/12/2016 for the sake of ready reference are reproduced herein under :-

1. Mandatory structural repairs and waterproofing works costing Rs.57,33,975.00 (Annexure-I)
2. Non-structural repair works which could be carried out in future or in phases by the perspective occupants costing Rs.20,95,000.00 (Annexure-II)
3. Staircase, Garage & servant's quarters repairs and restoration works which could be carried out in future or in phases by the perspective occupants costing Rs.11,17,720.00 (Annexure-III)

5 It was the submission of the learned counsel appearing on behalf of the Appellant Shri R D Soni that as per what was in contemplation when the said Minutes of Order were formulated that only the first stage would be covered. It was therefore the submission of the learned counsel that the said Shetgiri and Associates has gone beyond the mandate given to them by the said Minutes of Order.

6 In our view, it is not possible to accept the said contention urged on behalf of the Appellant. It is required to be borne in mind that the appointment of M/s. Shetgiri and Associates is by consent of the parties and the mandate to them is to carry out the repairs to the building in question. It would therefore fall within the domain of the said Architect as to the manner in which the said repairs are to be carried out. The said Architect have proposed the repairs to be carried out in 3 stages probably on the basis that the same would be the best manner in which the said repairs could be carried out. In our view, the 2nd and 3rd stages of the said repairs cannot be considered independently of the 1st stage and would form a part of the entire repairs which are to be carried out in respect of the building in question. In our view, the manner in which an exception is taken to the said orders speaks volume of the real intention of the Appellant in filing the above Appeal. The cause for filing the above Notice of Motion by the Defendant Nos.6 and 7 has been adequately reflected in the impugned order as during the pendency of the said Notice of Motion a part of the balcony of the structure in question has collapsed. The fact that there are about 347 children studying in the said school cannot be lost sight of, whose safety would be of paramount importance. It is required to be noted that the interest of the Appellant i.e. the original Defendant No.2 is adequately protected inasmuch as in the said Minutes of Order it has been observed that the said repairs would be without prejudice to the rights and contentions of the parties. The financial liability of

the Appellant is restricted only in respect of the payment of Rs.48 lakhs on a pro-rata basis. Hence we do not find any merit in the above Appeal. The same is accordingly dismissed. However, we reiterate that the repairs that would be carried out to the building in question would be without prejudice to the rights and contentions of the parties in the suit as also the MCGM.

7 In view of the dismissal of the above Appeal, Notice of Motion (Lodging) No.1854 of 2017 filed by the Appellant/Applicant for staying the impugned orders dated 13/07/2017 and 16/08/2017 does not survive and the same to accordingly stand disposed of as such.

[SARANG V KOTWAL, J]

[R.M.SAVANT, J]