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

**APPEAL FROM ORDER (ST) NO.5083 OF 2018  
WITH  
CIVIL APPLICATION (ST) NO.5085 OF 2018.**

Dwaipayan Ravishankar Diwedi  
and ors

... Appellant.

V/s.

Municipal Corporation of  
Greater Mumbai and anr

... Respondents

Mr. Anil R.Mishra, for the appellant.

Mrs. Madhuri More, for respondent corporation.

Mr. Pradeep J. Thorat, for respondent No.2.

**CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.**

**DATE : 25<sup>th</sup> SEPTEMBER, 2018.**

**P.C. :**

1] Heard learned counsel for the appellant and respondents.

2] This Appeal takes an exception to the order dated 8<sup>th</sup> February, 2018, passed by the City Civil Court, Mumbai, thereby refusing ad-interim relief, in the Draft Notice of Motion in L.C.Suit No.2366 of 2017.

3] The said Notice of Motion was taken out by the appellant, restraining respondent Municipal Corporation from taking any action in pursuance of the Notice dated 25.03.2014, issued under Section 354 of the Mumbai Municipal Corporation Act, and the order dated

5.9.2014.

4] By the said Notice, the owner of the building was directed to pull down the part portion of the structure of ground+1 upto plinth level and to vacate the structure immediately, from safety point of view to prevent any loss of human life.

5] The contention of the appellant is that he is in occupation of the said portion as a tenant and he is ready to repair the said portion. However, respondent corporation has not granted such permission. It is urged that though as per TAC Committee report of the year 2014, the building is categorized as C-1, Now he is having another report of the Structural Engineering stating that the building can be repaired. According to him, therefore, the impugned notice IS issued by the Respondent Corporation at the instance of landlord, though the building can be repaired. Moreover, it is the duty of the landlord to repair the same. However, only with an intention to evict the appellant from the suit portion, as the notice is issued, it is necessary to restrain the Respondent Corporation from taking any action in pursuance of the said notice.

6] To counter this submission, learned counsel for respondent No.2 has submitted that respondent No.2 has also brought the report of the Structural Engineer of the year 2017, to show that the building is beyond the stage of repairs.

7]                    Learned counsel for respondent corporation also submits that, apart from the TAC Committee report of the year 2014, there is also report dated 17.4.2017, stating that some portion of slab is already collapsed and some major cracks are also observed at beam section which could endanger the life and property. The photographs are also produced on record, which are self speaking and self eloquent to depict the condition of the suit building which can be definitely considered to be precarious and dangerous.

8]                    In view thereof, in my considered opinion, no fault can be found, if the trial Court has refused to grant ad-interim relief restraining respondent corporation from taking action in pursuance of the Notice and the order passed under Section 354 of the Mumbai Municipal Corporation Act.

9]                    The Appeal, therefore, being without merits stands dismissed.

10]                   In view of dismissal of Appeal itself, pending Civil Application therein becomes infructuous and the same is disposed off accordingly.

**[DR.SHALINI PHANSALKAR-JOSHI, J.]**