

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

WRIT PETITION No.5033 OF 2018

Smt.Shoeba Muneer Ahmed Shaikh & Ors.

... Petitioners

Vs.

Mehtab Allam Niyas Ahmed Shaikh @
Nanhebahe & Ors.

... Respondents

Mr.R.D. Suryawanshi for the Petitioners

Mr.G.J. Jain for the Respondent No.1

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: JULY 24, 2018**

P.C. :

1. This Writ Petition is directed against the order dated 31.3.2018 passed by the learned Civil Judge, Senior Division, Link Court, Bhiwandi, below exhibit 102 in Special Civil Suit No.498 of 1998. The petitioners are the legal representatives of the original defendant. Respondent No.1 has filed the suit for specific performance against the defendants in respect of the suit building. As per the case of the plaintiff, he has constructed the building as per the agreement and, therefore, he claims a share and alternatively, dues in the building. The suit is pending since 1998.

On 19.12.1998, the learned Civil Judge Senior Division, Thane, had directed the parties to maintain status quo till the decision of the suit. The said order was confirmed by the High Court. Thereafter, the condition of the building had worsened as many Banyan trees have grown up on the walls of the building. The walls are throughout of old plastering and, therefore, subjected to leakage, seepage and damage of drainage and water pipelines. The defendants, therefore, moved an application on 21.3.2017 for modification of the order of status quo as repairs are required in the building as the building is in a dilapidated condition which is dangerous to the lives of the residents of the building. The said application was rejected. Hence, this petition.

2. Heard submissions of the learned Counsel for both the sides. I am informed by the learned Counsel for the respondent/original plaintiff that the evidence in the matter has commenced. Perused the four photographs, tendered across the bar, which are taken on record and marked as exhibits 1 to 4. From the photographs, it appears that the building needs some repairs and, therefore, the order passed by the trial Judge is hereby set aside with following order:

- i) Petition is allowed.
- ii) The petitioners may carry on the repairs without claiming any equity in the suit property, subject to the outcome of the suit. Internal and external plastering can be carried out.
- ii) All the Banyan trees or any other trees are to be removed from the walls of the building and the gaps are to be filled up with cement or plastering.
- iii) Drainage pipelines are to be replaced by new pipelines.
- iv) Besides the above work, no other work is to be carried out. All the above works are to be done at the expense of the petitioner, without claiming any equity.
- v) The suit is of the year 1998 and hence, the trial Court is directed to try and decide the suit on or before 31.10.2018.

3. Writ Petition is disposed of accordingly.

(MRIDULA BHATKAR, J.)