

Sarnobat

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

**APPEAL FROM ORDER (STAMP) NO. 16200 OF 2018
ALONGWITH
CIVIL APPLICATION (STAMP) NO. 16201 OF 2018**

Mitesh Shah & Ors.	... Appellants
Vs.	
Municipal Corporation of Greater Mumbai & Ors.	... Respondents.

Mr. Pradeep Thorat a/w Mr. Bipin J. Joshi, for the Appellants.
Mrs. M. R. Bhoir, for the Respondent/MCGM.

CORAM : V. M. DESHPANDE, J.

DATE : 5th JULY, 2018.

ORAL JUDGMENT :

1. By the present appeal against the order, the appellants who are the original plaintiffs are challenging the order passed by City Civil Judge, Borivali Division, Dindoshi, Mumbai dated 6th June, 2018. By the said order the learned Judge of the Court below has refused to grant ad-interim injunction. **Admit.** Mrs. Bhoir, learned counsel waives notice for respondents. By consent of both the learned counsel, appeal is taken up for final hearing.
2. Heard Shri Pradeep Thorat, learned counsel for the appellants in extenso. In his usual submissive manner, he tried to

convince me that the appellants have made out a case for interference with the order passed by the learned Judge of Court below. The court appreciates his submissiveness. However, at the same time, the Court has to decide the matter by giving thoughtful consideration to the given set of facts.

3. The appellants before this Court are the original plaintiffs. They filed a Suit before the Court below, the same is registered as L.C. Suit No. 1528 of 2018. Along with the plaint, the appellants filed an application for grant of temporary injunction praying therein that during the pendency of the Suit, the respondent/Corporation shall not act upon the notice under Section 354 of B.M.C. Act dated 19th March, 2018. In the Suit apart from prayer of permanent injunction, they also sought declaration that the order of TAC i.e. Technical Advisory Committee of the Corporation dated 31st February, 2018 together with notice in question be declared as illegal, bad and unenforceable.

4. It is not in dispute that all the appellants are tenants of very old property known as Kanhaiya Bhavan. Even in the plaint itself the age of the property is stated and it is 60 years old. Said Kanhaiya Bhavan consists of 2 upper floors and partial 3rd floor. 1st, 2nd and 3rd floors are meant for residential purposes. Besides that there are two commercial shops on the ground floor. It is also stated in the plaint itself that the building is load bearing as well as the passage is

supported by RCC columns.

5. Presently the question before this Court is as to whether the appellants have made out a case for interference to the order passed by learned Judge of Court below rejecting ad-interim reliefs.

6. Various provisions in respect of Bombay Municipal Corporation Act were pressed into service by the learned counsel for the appellants. However, at this stage, in my view those are not at all necessary to consider because, the main Notice of Motion of the appellants is pending before the Court below. The fact prima facie, that the Court has to decide at this stage is to whether the building in question is dilapidated one and whether it is safe for residence for the residents and also whether it is safe for the passersby.

7. From the compilation which is tendered by Mr. Thorat during the course of the hearing shows that there are three structural audit reports and the report of TAC. The first structural report is by one Mr. Manoj Sathe who is licensed structural Engineer. This structural Engineer has inspected the site on 5th October, 2016 and 12th October, 2016 and gist of this report which is not in dispute is that no evacuation is necessary, only the structural repairs are required. The another audit report is by one Yogesh Patel. He is also a licensed structural Engineer. He has visited the site on 3rd July, 2017 and 11th March, 2017 and it is not in dispute that his report shows that the

building is of C-1 category and is required to evacuate and demolish immediately. The third report is by one V.J. Joshi and Associates and it is dated 8th May, 2018. This report is mainly pressed into service by Shri Thorat, learned counsel for the appellants.

8. The TAC report is available on record. It shows that it consists three persons i.e. Chief Engineer, Chief Engineer (DP) and Chief Engineer (BM). These three persons are the technical persons. It appears that there was a meeting that was held by TAC and in that meeting 12 persons including the structural Engineer Shri Manoj Sathe and structural Engineer Shri Yogesh Patel participated. At page 84 of the compilation there is an opinion of the TACT which is reproduced herein below;

The structural audit reports, proforma 'B' and facts put up by all the structural consultants, opinions/reports of ward staff and representatives of TAC and observations made during the site visit by TAC members on 22.01.2018 were discussed during the meeting in detail. The N.D. Tests are not applicable to the load bearing structure hence the N.D. Tests are not performed. Columns, beams, load bearing walls, slab of common passage, toilet block and staircase are in extremely critical and alarming condition. The tenants are using the premises at the cost of their life and if any mishap takes place, it will endanger the life of the residents and the passersby.

TAC members feel that the structure is beyond repair and even if repairs are carried out it would not serve any purpose, as the life of the building will not enhance by much. Hence, unanimously TAC members opined that the said building known as “Kanaiya Bhavan” is in severely dilapidated condition and the repair methodology and repair cost suggested by Shri Manoj V. Sathe is not realistic, practical and acceptable. Moreover, Shri Manoj V. Sathe, also agreed that the building is in highly deteriorated condition. Further, the building under reference may collapse without giving any warning thereby endangering the life and property of the residents and the people residing in adjoining properties and passersby. In view of the facts the TAC members unanimously opined that the structure under reference is not habitable and needs to be vacated and demolished immediately by following due process of law under the supervision of structural consultant.

9. According to the learned counsel for the appellants the observations of the TAC that ND test should not be applicable to the load bearing is not correct and the said test ought to have been done. The TAC consists of technical persons. They are technical experts. The Court cannot substitute its view in place of the opinion given by technical experts especially when there is nothing available on record to show that the report of TAC is not correct. So therefore, merely it is

challenged across the bar the same can not be discarded.

10. In so far as V.J.Joshi Associates report is concerned which is pressed into service very heavily by the learned counsel of the appellants, I would like to quot herein below the conclusion drawn by said structural Engineer.

Conclusions :-

1] The structure needs maximum concrete repairs with polymer, micro concreting and jacketing work.

2] Also, additional reinforcement bars to be provided as directed to beam, slab and column.

3] Plaster external is to be repaired with non-shrinkage compound, similarly internal plaster to be repaired.

4] Cracks/ separation cracks are to be filled with polymer cement and injection grouting of cementations grout to be done as directed.

5] Vegetation growth from walls to be removed.

6] The structure can be repaired by polymer mortar, micro concrete and jacketing and may be partially vacated during repair works as necessary.

7] The N.D.T. test carried out in October 2016 are not satisfactory.

8] The structural frames of R.C.C. columns should be grouted with low viscosity epoxy to seal the crack and cavities inside the concrete. In addition to above wherever damage concrete is noted the same should be repaired by polymer mortar or micro concreting. Injection by EPCO – KP- 100 Concrete Penetrating Corrosion Inhibitor (CPCI) to stall the corrosion activity is also recommended.

9] Terrace waterproofing to be carried out.
On completion of the above repairs the building will be safe and stable for human habitation.

[Emphasis supplied]

11. From the aforesaid also it is clear that even V.J. Joshi and Associate has not stated or express its opinion that the building is stable and safe for human habitation. Extensive suggestions are given not only that in the last, the said Associates had stated that only on the completion of the repairs it will be safe. In that view of the matter, even the report of V.J. Joshi and Associates, in my view it is not helpful to the appellants. Further the learned Judge of the court below was having advantage to peruse the very recent photographs which show the condition of the building and that has also made some impact in the mind of the learned Judge of Court below while deciding the prayer for ad-interim relief.

12. Since the TAC in clear term has expressed its opinion about the status of the building and also in the report of structural auditor appointed by the appellants themselves namely V.J. Joshi and Associates which also shows that the building is not inhabitable, unless and until the repairs suggested by it are carried out. Therefore, in my view no case is made out for interference to the order dated 6th June, 2018. Consequently, I dismiss this appeal. Needless to mention here that interim order granted by this Court on 13th June, 2018 (Coram : Smt. Shalini Phansalkar-Joshi, J.) stands vacated.

13. At this stage learned counsel for the appellants has made following two prayers;

1) to continue the interim order for further four weeks and

2) to consider the application filed on behalf of the appellants before the Corporation for repairs which was not considered.

14. In so far as first prayer is concerned I see no reason to extend the ad-interim order since the building is not safe and continuance of the said building in the present state not only is dangerous to the human life of the tenants themselves and also it will be unsafe to the passerby and there is always possibility of mishap during this monsoon therefore, said prayer is rejected. In so far as second prayer is concerned, appellants can move the necessary

application in that behalf before the Trial Court.

ORDER

- I) Appeal is dismissed. No order as to costs.
- II) All pending Civil Applications are also dismissed.

[V. M. DESHPANDE,J.]