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

**APPEAL FROM ORDER (ST) NO.27744 OF 2018
WITH
CIVIL APPLICATION (ST) NO.27746 OF 2018
WITH
CIVIL APPLICATION (ST) NO.28639 OF 2018**

Himmat Mansion CHS Ltd
and ors

... Applicants.

V/s.

Municipal Corporation of Greater
Mumbai

... Respondent

Mr. Dhaval Mehta a/w Ms. Rima Paradkar i/by D.
M.Associates, for the appellants.
Mrs. Madhuri More, for respondent corporation
Mr. P.G. Chavan, Assistant Engineer B & F R/C ward.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 29th OCTOBER, 2018.

P.C. :

- 1] Heard learned counsel for the Appellants and respondent
- 2] This Appeal takes an exception to the order dated 25.06.2018, passed by City Civil Court, Bombay, thereby dismissing the Notice of Motion No.2029 of 2018 in L.C.Suit No.1594 of 2015.

3] The said suit was filed by present appellants, who are residents of the Co-operative society and seeking relief of restoration of electricity supply and the water supply to their premises. The trial Court, however, has rejected the Notice of Motion and hence they have approached this Court.

4] The reason on account of which the Notice of Motion is rejected is that earlier appellants had challenged the Notice issued by the Municipal Corporation under Section 354 of the Mumbai Municipal Corporation Act, by filing Notice of Motion seeking injunction restraining respondent corporation from acting in pursuance of the said Notice and from taking action of demolition of the suit property. In the said Notice of Motion, interim relief was rejected by the trial Court on 22.6.2015. The Appellant herein had preferred Appeal from Order bearing No.848 of 2015. The said Appeal was heard and dismissed by this Court, by order dated 19th June, 2017, holding that, having regard to the dilapidated condition of the premises, the trial Court has rightly refused the ad-interim relief.

5] Thereafter Municipal Corporation has taken action of disconnection of electricity and water connection to the said

premises.

6] In view thereof, the trial Court, having regard to the order passed by this Court; wherein all the points raised by the appellants were considered in detail, refused to grant any relief in this Notice of Motion.

7] It follows that in view of the earlier order passed by this Court, wherein all the aspects and contentions raised by the appellants were already considered by this Court and rejected, this Court cannot re-enter into merits of the same. Hence, the only submission advanced by learned counsel for the appellants is that the committee members of the Society have already executed development agreement with developer Bhatia Builders and Development Pvt. Ltd on 22.10.2018. The builder will have to apply to the Registrar of Co-operative Societies under Section 79A of the Co-operative Societies and it may require some time. Therefore, request is made that till then, the water supply and electricity connection be restored to the suit premises, subject to appellant filing an undertaking that on the expiry of three months, they will vacate the suit premises on their own.

8] However, considering the condition of the suit building which has become already dilapidated and the said finding is

confirmed by this Court also, restoration of electricity and the water supply cannot be granted and trial Court has rightly rejected the said prayer. It has to be noted that, even if, appellants are giving undertaking that they will be residing at their own risks and consequences, the Report of Municipal Corporation shows that the building is situated near railway station as well as S.V. Road, which is having high density of traffic of vehicles as well as of pedestrians. Therefore, if the suit building collapses at any time, it will not only cause loss to life and property of persons residing therein, but also to the persons nearby and to the passerbys. In such situation, there is no question of granting any restoration of electricity or water connection, which is already disconnected by the Municipal Corporation. The Appeal, therefore, being without merits stands dismissed.

8] At this stage learned counsel for the appellants seeks time of three months for vacating the suit premises.

9] Learned counsel for the respondent corporation raises strong objection thereto.

10] However, as some time is required to appellants to vacate the premises, subject to their filing of an undertaking, in this Court, time to vacate the premises is granted by two months.

11] Appeal is disposed off in above terms.

12] In view of disposal of Appeal itself, pending Civil Application therein no more survives and the same is disposed off accordingly.

[DR.SHALINI PHANSALKAR-JOSHI, J.]