

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

APPEAL NO. 37 OF 2018

Geetanjali Shaily Shailendra. ... Appellant.
V/s.
M/s.Atul builders and Associates and another. ... Respondents.

Ms.Geetanjali Shailendra, appellant in person.
Mr.Roop Manohar Vasudeo with Ms.Dipali Mainkar
for the respondent.

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CORAM : A.S.OKA AND M.S.SONAK, JJ.

DATE : 27th August 2018.

P.C.:

The appellant is the defendant in a suit filed by the respondents under section 6 of the Specific Relief Act, 1963. The Court Receiver, High Court has been appointed in respect of ground floor premises subject matter of the suit. On 14th July 2017, a report submitted by the Court Receiver was placed before the learned single Judge of this Court which recorded that the subject premises were not in a good condition and were on the verge of collapse. Therefore, on 14th July 2017, the learned single Judge directed the Court Receiver to appoint a designated Structural Engineer on his panel to visit the premises in occupation of the Court Receiver and make a report on the condition of the premises. Accordingly, M/s.Amol Bora and Company were appointed by the Court Receiver. They submitted a report dated 8th August 2017 along with photographs. The report contained their opinion on the

structural status of the building. The present appellant objected to the report and relied upon a report submitted by her own Architect. The following is the operative part of the impugned order:

“a. The Court Receiver is directed to forward all the relevant papers of Rimzhim Bungalow, Khar (W), Mumbai – 400 052 to the Municipal Corporation for taking appropriate action according to law.

b. In view of the above mentioned facts the Court Receiver's Report stands disposed of.

c. The plaintiff to deposit cost of Rs.3000/in the office of the Court Receiver within four weeks from today.”

Perusal of the impugned order shows that the learned single Judge has neither made any adjudication on the rights and liabilities of the parties nor has made any adjudication on the structural status or structural condition of the premises in respect of which the Court Receiver has been appointed. By the impugned order, the Court Receiver has been directed to forward all the relevant papers to the Municipal Corporation which would include the report of M/s.Amol Bora & Company as well as opinion/report produced by the appellant. Ultimately, after considering the material produced by the Court Receiver, it is for the Municipal Corporation to take appropriate action in accordance with law.

2. Apart from the fact that against the impugned order, LPA is not maintainable, for the reasons set out above, even otherwise, we find no fault in the approach of the learned single Judge. After noticing the report produced by the Court Receiver of M/s.Amol Bora and Company which recorded that the structure is in a dilapidated condition, the learned

single Judge directed the Court Receiver to invite attention of the Municipal Corporation to the material on record. The learned single Judge has not laid down what action the Municipal Corporation should take.

3. The constituted attorney appearing for the appellant submitted that M/s.Amol Bora and Company are not a Structural Consultants. Even this contention is irrelevant. Even the learned single Judge has not recorded any finding on the correctness or otherwise of the opinion expressed by M/s.Amol Bora and Company. Therefore, there is no merit in the appeal. Hence, subject to what is observed above, the appeal is dismissed.

4. In view of dismissal of appeal, notices of motion, if any, do not survive and stand disposed of accordingly.

(M.S.SONAK, J.)

(A.S.OKA, J.)