

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (ST.) NO.11734 OF 2019
WITH
CIVIL APPLICATION (ST.) NO.11735 OF 2019

Mr. Sudarshan Sataramdas Motwani	...	Appellant
Versus		
Sarita Pradhan		
And Another	...	Respondents

Mr. Dewang Parmar a/w Ms. Kiran P. Desai i/b Ravindra Lokhande
for the Appellant.
Mr. Mayank Bagla a/w Ms. Pallavi Nimkar i/b AAK Legal for
Respondent Nos.1 and 2.

CORAM : S.C. GUPTE, J.

DATE : 13 AUGUST 2019

P. C. :

. Heard learned Counsel for the parties.

2 This Appeal from Order challenges an order passed by the City Civil Court at Mumbai. The impugned order requires the Appellant (original defendant) to carry out work of repairs under the supervision and recommendation of Mr. Shetgiri, who is a Commissioner appointed by the Court for the purpose of such work of repairs by consent of parties. The Respondents (original plaintiffs) had, in the present suit, sought directions against the Appellant (original

defendant) to carry out repairs to the terrace flat occupied by the Appellant on the thirteenth floor of the suit building. It was the grievance of the Respondents that as a result of leakage from the terrace flat on the thirteenth floor, water was sweeping into the Respondents' flat. Mandatory injunction was, accordingly, sought against the Appellant for carrying out repairs of the terrace. At the hearing of the Notice of Motion taken out in the Suit by the Respondents, by an order dated 28 February 2019, passed by consent of both parties, the trial court recorded an agreement between the parties for settling the matter by carrying out the repairs to the terrace, which was the subject matter of the suit. Before this order was passed, Mr. Shetgiri was appointed as a commissioner by the court to report on the causes of the leakage. The commissioner in his report opined that the causes were two-fold. Firstly, the leakage was through external walls, which was a matter for the society to attend and secondly, there was leakage from the terrace flat occupied by the Appellant. It appears that the society has already undertaken repairs to the external walls so as to tackle the issue of leakage. So far as the leakage from the terrace flat is concerned, as noted above, the parties made a joint statement that repairs, if any, for stopping leakage from the terrace should be carried out under the supervision and recommendation of Mr. Shetgiri. For the purpose of taking into account further suggestions of the parties in this behalf, the Notice of Motion was stood over to the next date, i.e. 4 March 2019. On that date, it appears that the Appellant's Advocate went back on his statement made earlier before the Court that the work of water-

proofing on the terrace would be carried out under the supervision and recommendation of Mr. Shetgiri. Learned Advocate appearing for the Appellant submitted before the Court that the Appellant would engage his own water proofing expert in order to get rid of the leakage with least damage to the terrace. In the meantime, the Respondents had already started work in their ceiling in accordance with and under the recommendation and supervision of Mr. Shetgiri. The trial court was, in the premises, of the view that having agreed to carry out repairs under the supervision and recommendation of the Court Commissioner, it was not open to the Appellant to go back on the compromise. In fact, the order passed on the last occasion, i.e. 28 February 2019, indicates that the Appellant had proposed that upon carrying out of repairs under the supervision and recommendation of Mr. Shetgiri, the Suit should be withdrawn by the Respondents and the Respondents had shown their willingness to do so. Learned Counsel for the Respondents is prepared to stand by the commitment made by his client on 28 February 2019. Learned Counsel submits that if these repairs are carried out, as directed by the court on 4 March 2019, his clients shall withdraw the suit.

3 Having already agreed to the appointment of Mr. Shetgiri, as a commissioner to supervise and recommend the work of repairs, and the Commissioner having carried out his work suggesting the manner of carrying out repairs, it is not open to the Appellant to go back on the compromise. There is, accordingly, no merit in the appeal. Appeal from Order is dismissed.

4 In view of the dismissal of the Appeal, the Civil Application does not survive and the same is also disposed of.

(S.C. GUPTE, J.)