

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

**APPEAL FROM ORDER NO. 699 OF 2018
WITH
CIVIL APPLICATION NO. 916 OF 2018**

Mrs.Rama Tiwari			
Prop. of M/s. Indu Clinic	...		Appellant
V/s.			
Miss.Bepsy Hakim & Ors.	...		Respondents

- Mr.Satyan N. Vaishnav a/w. Ms.Nupur J. Mukherjee i/b. M/s.N.N. Vaishnav and Company for the Appellant.
- Mrs.Madhuri More for the Respondent Nos.4 to 6-MCGM.
- Mr.Rajesh Khobragade a/w. Mr.Abhijeet for Respondent Nos.1 to 3.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 1st FEBRUARY, 2019.

P.C. :

1] Heard learned counsel for both the parties.

2] This Appeal takes an exception to the order dated 21/08/2018 passed by the City Civil Court, Mumbai, thereby dismissing the Notice of Motion No.32 of 2018 filed in Long Cause Suit No.1521 of 2016.

3] The said Notice of Motion was taken out by the Appellant, who is Defendant No.4 in the trial Court seeking permission to carryout various repairs to the suit premises as mentioned in prayer Clause No.(a)(i) to (viii).

4] The Appellant is the tenant in the premises which are owned by the Respondent-herein. The land below the same is owned by the Respondent-MCGM. As per the Respondent-Landlord, the premises were let out to the Appellant for residential purpose. However, he has carried out the unauthorized constructions and converted the user of the suit premises to commercial purpose and also encroached upon common passage etc. Though the present Appellant has denied all these allegations, it is a matter of record that the Respondent/plaintiff has instituted suit for declaration that the construction carried out by the Appellant is unauthorized and liable to be demolished. On that ground the Respondent has also sought eviction of the Appellant. The said suit is pending in the Small Causes Court. Therefore, according to learned counsel for the Respondent, if the Appellant wants to carry out any tenantable repairs, then he should seek permission from the Small Causes Court where the eviction suit is pending.

5] According to learned counsel for the Appellant, however, as on today no such eviction suit is pending nor any proceedings are pending in the Small Causes Court between the landlord and the tenant. It is submitted that the rejection of the Notice of Motion on this ground by the trial Court was therefore not legal and correct. Secondly, it is submitted that the trial Court has, vide its order dated 19/07/2016, restrained the Appellant from carrying out any construction which includes tenantable repairs also in the suit premises and therefore, the only forum available to the Appellant to approach is the trial Court itself and not the Small Causes Court, as the Appellant wants to modify the earlier order passed by the trial Court on 19/07/2016 by which the ad-interim relief was granted in favour of the Respondent-Plaintiffs. It is urged that on this ground also, the rejection of the Notice of Motion by the trial Court was not at all correct.

6] Thirdly, it is submitted that for carrying out tenantable repairs, the permission of the Municipal Corporation is not at all required and for that purpose reliance is placed on the judgment of this Court in the case of *Nelson George Wilington @ Downey Through his constituted Attorney Mrs.Minal Mohan Lokegaonkar Vs. Mrs. Jyoti Pattam and Ors.*, [2016 SCC Online Bom.5881]. It is urged that

the trial Court has rejected the Notice of Motion on this ground also and therefore, the stay order cannot be justified.

7] Learned counsel for the Respondent however points out that the Appellant has already carried out the repairs, which according to him were necessary and the affidavit to that effect is filed on record before the trial Court on 12/07/2018 along with photographs. Therefore, if despite that the order passed by the trial Court the Appellant has carried out the repairs, then according to him, the Appeal itself has become infructuous.

8] Learned counsel for the Respondent-MCGM submits that the repairs carried out are totally unauthorized, illegal and without obtaining permission from the Municipal Corporation and the Municipal Corporation has already initiated action against the Appellant.

9] In my considered opinion, in the backdrop of these facts, when the Appellant has already carried out the repairs and the Corporation has also issued notice against him for carrying out such illegal and unauthorized construction, no case is made out to interfere in the impugned order passed by the trial Court.

10] In view of the above, as the Appeal being without merit, the Appeal and the Civil Application stand dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]