

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

**APPEAL FROM ORDER (ST.) NO.24663 OF 2019
ALONG WITH
CIVIL APPLICATION (ST.) NO.24664 OF 2019**

Mr. Keerthi N. Thakker

And Others

... Appellants

Versus

Municipal Corporation of Greater

Mumbai

And Others

... Respondents

.....

Mr. Manojkumar Upadhyay a/w Ms. Sumandevi Yadav and Mr. Shailesh Pal for the Appellants.

Mr. Vinod Mahadik for Respondent No.1.

.....

CORAM : S.C. GUPTE, J.

DATE : 6 SEPTEMBER 2019

P. C. :

. Heard learned Counsel for the parties. The Appeal from Order is admitted and taken up for hearing forthwith by consent of the parties.

2 The Appeal from order challenges an order passed by the City Civil Court, Dindoshi (Borivali Division), Mumbai on a notice of motion. By the impugned order, the notice of motion of the Appellant (original plaintiff no.1) has been dismissed. The controversy concerns a notice issued by the Respondent-corporation under Section 354 of Mumbai Municipal Corporation Act, 1888 ("Act") to

the Appellants and others, who are tenants of bungalow premises consisting of ground and one upper floor. It is the grievance of the Appellants that the report submitted by the landlords of the suit building (report by one Yogesh P. Patel, Structural Consultant), which has been made the basis of the assessment of the suit structure by Technical Advisory Committee (TAC) in the present case, was prepared without inspection of the suit building. It is submitted that there are diverse anomalies, such as the structure being referred to an RCC structure and the same being subjected to a core test. It is submitted that the suit building is a load bearing structure, for the strength of which, core test is inapplicable. It is submitted that these anomalies make it apparent that the suit building was not inspected by the consultant. It is submitted that this aspect of the matter was lost sight of in the TAC report.

3 Learned Counsel for the Appellants submits that their consultant was not fully heard before the impugned order was passed. There is indeed substance in the submission. Roznama maintained by the City Civil Court, Dindoshi, records that “argument of the plaintiffs was closed due to shortage of time as court time was over”. It appears that on the same date after closing the plaintiffs’ arguments, due to want of time, the operative part of the order was dictated in court, though reasons were to be recorded separately later. In these circumstances, it is apparent that there was a clear and complete failure of justice. Some vital aspects of the plaintiffs’ case could not be placed before the court by the plaintiffs, since the court did not

allow the plaintiffs to argue their case fully. The impugned order, accordingly, cannot be sustained and deserves to be set aside.

4 The Appeal from Order is accordingly allowed and the impugned order dated 26 August 2019 is quashed and set aside and Notice of Motion No.2831 of 2017 in Suit No.2427 of 2017 is remanded to the City Civil Court, Dindoshi, Mumbai for a fresh hearing in accordance with law. The court will have to hear the plaintiffs fully before any order is passed.

5 Since the impugned order has been quashed and set aside, the ad-interim order operating during the pendency of the notice of motion shall revive and operate till the notice of motion is decided by the trial court on remand. Learned Counsel for the Appellants states that in the meantime, the Appellants and others on whose behalf the present appeal is filed, shall occupy the premises at their own risk.

5 In view of the disposal of the appeal, the Civil Application does not survive and the same is dismissed.

6 At the request of both parties, the City Civil Court at Dindoshi, Mumbai is requested to dispose of the notice of motion as expeditiously as possible and preferably within a period of four months from today.

(S.C. GUPTE, J.)