

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

**APPEAL FROM ORDER NO.378 OF 2019
WITH
CIVIL APPLICATION NO.451 OF 2019
IN
APPEAL FROM ORDER NO.378 OF 2019**

Mitesh Shah & Ors. ...Appellants
V/s.
The Municipal Corporation of
Greater Mumbai & Ors. ...Respondents

....
Ms. Rubia Taneja a/w. Ms. Shama Taneja, advocate for the
applicants.
Mrs. More, advocate for the respondents/MCGM.

....
CORAM : M.S.KARNIK, J.

DATE : 11th JUNE, 2019

P.C. :

1. Heard learned counsel for the appellants.
2. The appellants seek to challenge the order dtd.02/11/2018 passed by the Judge, City Civil Court at Dindoshi, refusing to grant ad-interim relief in Draft Notice of Motion No. 2 in L. C. Suit No. 1528 of 2018, filed by the appellants/original plaintiffs. By the notice of motion the

appellants challenged the notice issued by the MCGM on 24/10/2018 disconnecting the electricity and water connection of the building in question. Further by the said notice, it was indicated that despite several letters regarding vacating the dangerous building on urgent basis, still some of the occupants have not vacated the premises in the said dangerous building.

3. Learned counsel for the appellants submitted that the TAC committee report is not in consonance with the ground reality as regards the condition of the building. She submits that there are 100 occupants who will become homeless in the event such a drastic action is taken. She submits that they all are from middle-class families. She would further submit that in view of the structural audit report submitted by the private structural auditor, the building can be repaired. She submits that the members are ready to carry out the repairs. She would moreover submit that it is because of the dispute between two parties who claim the development rights that the occupants are made to suffer. The MCGM has issued notice under section 354 of the MMC Act at the instance of the developer and therefore the said

notice is not bonafide.

4. She however in all fairness has produced on record the order dtd.06/06/2018 passed earlier by the trial court refusing ad-interim relief. The order refusing ad-interim injunction against the issuance of notice under section 354 of the MMC Act came to be confirmed by this court in Appeal From Order (Stamp) No.16200 of 2018 vide order dtd.05/07/2018. I have gone through the order dtd.06/06/2018 passed by the trial court and the order dtd.05/07/2018 passed by this court.

5. The very same objections which are raised by the learned counsel for the appellants in this appeal were subject matter of consideration before the City Civil Court and before this court on the earlier occasion. This court has elaborately dealt with all the contentions raised by the learned counsel for the appellants. After considering the objections this court refused grant of any interim relief in favour of the appellants holding that the building is not safe and continuance of the said building in the present state is not only dangerous to the human life of the tenants themselves but also it will be unsafe to the passerby and

there is always possibility of mishap during this monsoon (2018) and therefore the prayer for interim relief was rejected.

6. In view of the detailed order passed by this court on 05/07/2018, it is not possible for me to again consider the same submissions and arrive at a different conclusion. In this view of the matter, I do not find any reason to interfere with the impugned order of the trial court.

7. While going through the order dtd.05/07/2018, it is observed that as regards prayer of the appellants to consider the application filed on behalf of the appellants before the Corporation for repairs, the appellants can always file the necessary application before the trial court.

8. Needless to mention that if such an application is moved before the trial court, obviously the trial court will consider the same in the light of what is observed by this court in the order dtd.05/07/2018.

9. In this view of the matter, the Appeal is rejected with no order as to costs and is disposed of accordingly.

10. In view of the disposal of the Appeal, nothing survive for

consideration in Civil Application. The Civil Application is disposed of.

(M.S.KARNIK, J.)