

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 6454/2019

(MANILAL JAMNADAS LODHIA **VERSUS** ASHWINKUMAR MANOHARRAO KOTPALLIWAR & ANR)

Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

Shri R.M. Bhangde, counsel for petitioner.
 Shri M. Anilkumar, counsel for R-1.
 Shri M.I. Dhattrak, counsel for R-2.

CORAM : A.S. CHANDURKAR, J.

DATE : OCTOBER 01, 2019.

Considering the short issue involved, the learned counsel for the parties have been heard by issuing **RULE** and making the same returnable forthwith.

The petitioner is the original plaintiff who has filed the suit for mandatory injunction praying that the defendant no.1 who is the owner of the structure standing on City Survey No.6121 be directed to carry out repairs with a further relief of mandatory injunction that the defendant no.2 be directed to issue a notice under Section 265A(4) of the Maharashtra Municipal Corporations Act, 1949 to the defendant no.1. In that suit, the plaintiff filed an application for temporary injunction which application was rejected by the trial Court. The appeal filed by the original plaintiff challenging that order is pending before the Appellate Court. During pendency of the said miscellaneous appeal, the plaintiff filed an application at Exhibit 23 in which it was prayed that he be granted permission to demolish the first and the second floor of the said building on the ground that it was in a dilapidated condition. Alongwith that application, he also filed an application at Exhibit 22 praying that till the earlier application was decided, status quo be directed to be maintained. By the impugned order, the application at Exhibit 22 came to be rejected.

Heard Shri R.M. Bhangde, learned counsel for the petitioner, Shri M. Anilkumar, learned counsel for the respondent no.1 and Shri M.I. Dhattrak, learned counsel for the respondent no.2. While issuing notice in the writ petition, this Court on 20.09.2019 had directed the parties to maintain the position as was prevailing on that day with an observation that the occupation of the petitioner of the suit premises was at his own risk and consequences. After hearing the learned counsel for the parties, it is seen that the application at Exhibit 23 as well as the miscellaneous appeal is pending before the Appellate Court. Instead of adjudicating the contentions as raised by the parties which are required to be raised in the miscellaneous appeal, directions can be issued to the Appellate Court to decide the application at Exhibit 23 alongwith the miscellaneous appeal filed by the petitioner herein. This is for the reason that similar contentions are likely to be raised even in the challenge raised to the order passed below Exhibit 22.

Accordingly, the writ petition is disposed of by passing the following directions:-

- I. The Appellate Court shall decide the application at Exhibit 23 as well as Miscellaneous Civil Appeal No.41 of 2019 expeditiously and preferably within a period of one month. The parties shall appear before the Appellate Court on 05.10.2019 and the period of one month shall be reckoned from the said date.
- II. Without prejudice to the rights of the parties, it is clarified that the petitioner's occupation of the suit premises would be at his own risk and consequences for which the defendants would not be responsible.

- III. The Ad-interim relief granted on 20.09.2019 shall continue to operate till the said miscellaneous civil appeal is decided and for a period of seven days thereafter. Needless to state that the occupation of the petitioner would be at his own risk and consequences. This direction is issued without prejudice to the rights of the parties.
- IV. All points raised on merits are kept open.

Rule accordingly. No costs.

JUDGE

APTE