

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

**INTERIM APPLICATION (ST) NO.92859 OF 2020
IN
WRIT PETITION NO.10357 OF 2004**

Bhalchandra
G. Dusane

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Bhalchandra G.
Dusane
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Amol Vitthal Suram & Anr. Applicants

In the matter between

Vitthal Vyankataya Suram
since deceased thru Legal Heirs Petitioners

Vs.

Smt. Rukminibai K. Kadgi Respondents
since deceased thru Legal Heirs

Mr. Shriram S. Kulkarni for Applicants.
Mr. V.D. Raut for Respondent Nos. 1 to 7.
Mr. Abhijit Kulkarni for Respondent No. 8 - BMC

**Coram : NITIN W. SAMBRE, J.
Date : 14th DECEMBER, 2020**

P.C.:

1. In a pending dispute between the landlord and tenant in Writ Petition, the petitioner-tenant has moved this application seeking permission to carry out the repairs of the premises, which are occupied by him, as the same came to be damaged during last heavy rains.

2. Shri. Kulkarni, learned counsel appearing for the applicants-tenants would submit that the applicant-tenant is willing to carry out the repairs to the structure in question of which he is in exclusive possession, as the Respondent-landlord has failed to carry out the repairs. According to him, such repairs will be at the costs of the Petitioner-tenant, for which he shall not be seeking any reimbursement of costs in the final claim. According to him, the Petitioners-Applicants shall restrict the repairs to the extent of replacement of roof and supporting rafters, so also the surrounding wall. He further consents for his possession over the property of 40 x 20 feet as is reflected in the report of the Sub Engineer, Pune Municipal Corporation in an affidavit filed today.

3. As such, according to him, he should be permitted to carry out the repairs.

4. Shri. Raut, learned counsel appearing for the Non-applicant landlord would urge that it is an obligation under Section 23 of the Rent

Act on the landlord to carry out repairs. He would urge that in accordance with the said provisions, the landlord is willing to discharge his statutory obligation. According to Mr. Raut, such repairs will be carried out expeditiously by landlord and as such prayed for passing of an appropriate order.

5. Considered submissions.

6. When the application was initially moved by the Petitioners-Applicants for permission to carry out repairs, the respondent-landlord has resisted the prayer for carrying out repairs as is reflected in the Affidavit-in-Reply. That being so, the consequences as are reflected in the provisions of Section 23 of the Rent Act will follow i.e. the tenant can come forward and carry out the repairs can be inferred. The landlord by way of after thought has changed his stance. So as to avoid physical difference, as the Applicant is residing in the premises, in the backdrop of above, it will be appropriate in my opinion, to pass the following order, in the interest of justice.

ORDER

(I) The Petitioners are permitted to carry out repairs to the walls, roof by replacing tin sheets and rafter supporting such in an area as is reflected in the report submitted by Pune Municipal Corporation.

(II) The Undertaking given by the Applicants-Petitioners that he shall not be claiming any reimbursement of costs of repairs or shall not claim any adjustment on the said costs in future in the matter of compensation, if ordered to be made payable by the Respondent is accepted.

7. The Interim Application stands allowed in above terms.

(NITIN W. SAMBRE, J.)