

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

INTERIM APPLICATION NO.510 OF 2021

IN

EXECUTION APPLICATION (LODGING) NO.2329 OF 2018

Akhtarbhai Abdullabhai (Since Deceased)

Through LRs.: Memuna A. Abdullabhai & Ors.

.. Applicants–Decree Holders

In the matter between

Mohammed Hussain Abdullabhai (Since Deceased)

Through LRs.: Zulfikar M. Kagalwala & Ors.

.. Original Claimants

Vs.

Taherbhai Abdullabhai and Ors.

.. Respondents–Judg. Debtors

Mr. Sean Wassoodew, with Ms. Shruti Bhavsar, for the Applicants–Decree Holders.

Ms. Rekha Rane, 2nd Assistant to Court Receiver, is present.

CORAM : A. K. MENON, J.

DATE : 20TH OCTOBER, 2021.

P.C. :

1. This is an application whereby the applicants–decree holders seek a direction against respondents 1 and 2 to carry out repairs to the building pursuant to an undertaking recorded on 16th February 2017 read with order dated 27th September 2017 passed in the Court Receiver’s Report No.12 of 2017. The order of 27th September 2017 records that if repairs are not completed as on 27th March 2018, as contemplated in paragraph 2 of that order, defendants 1 and 3 shall deposit Rs.5 lakhs with the Prothonotary and

Senior Master for the first 10 days and if repairs are still not completed, on the 11th day, another Rs.5 lakhs upto the 20th day and so on. These amounts were to be invested in a nationalized bank. Defendant no.3 is the 2nd respondent in this IA and he is stated to have expired. His heirs are now on record.

2. Today Mr. Wassoodew seeks reliefs only against respondent no.1, who was bound to carry out repairs. It is contended that the repairs have not been carried out and the order dated 27th September 2017 has been complied only in part. A total of Rs.55 lakhs lies deposited and that amount is said to be invested by the Prothonotary and Senior Master. Mr. Wassoodew therefore submits that he is entitled to relief in terms of this IA, in particular prayer clause (a) directing the respondents 1 and 2 to carry out repairs, upon failure to comply to deposit further sums. The respondent no.1 has deposited only Rs.55 lakhs. He was bound to continue to make the deposit, if all repairs are not carried out. Mr. Wassoodew states and as set out in paragraph 22A of the IA, the repairs are still not carried out.

3. The respondent no.1 is absent on call. Heirs of respondent no.2 are also absent. Mr. Wassoodew states that relief is sought only against respondent no.1. He does not seek to pursue reliefs against respondent nos.2(a) to 2(c) at present, reserving liberty to so apply, if so advised, at a later date.

4. In view of the obligation to carry out repairs, as recorded in the order

dated 16th February 2017 and as reiterated on 27th September 2017, the respondents having been served, as evidenced by the affidavit-of-service dated 14th October 2021 presented before the court today, I am of the view that prayer clauses (a) and (b) are liable to be granted.

5. Respondent no.1 has not opposed the application and accordingly I am of the view that this IA can be disposed finally to the limited extent sought in prayer clauses (a) and (b) of the IA, reserving liberty to the respondent no.1 to apply for appropriate clarification as to the amount required for carrying out repairs. In these circumstances, I pass the following order :-

- (i) Interim Application is allowed in terms of prayer clauses (a) and (b) as against respondent no.1.
- (ii) IA is disposed in the above terms, reserving rights of the applicants-decree holders to apply, if so advised.

(A.K. MENON, J.)