

06.04.2022
Item No.16
Court No.6.
AB

M.A.T. 370 of 2022
With
I A CAN 1 of 2022

Smt. Supti Roy & Anr.
Vs
The Kolkata Municipal Corporation & Others

Mr. P.S. Bhattacharya, Sr. Advocate,
Mr. Raju Bhattacharya,
Mr. Arunava Maiti ...for the Appellants.

Mr. Debjit Mukherjee,
Ms. Rupsha Chakraborty...for the State.

Mr. Ranajit Chatterjee,
Mr. Subhrangsu Panda for the K.M.C.

Mr. Ayan Dutta....for the Respondent No.11, 12.

By consent of the parties, the appeal and the application are taken up for hearing.

Affidavit of Service filed in Court today be kept on record.

The writ petitioners are before us by way of this appeal. They had approached the learned Single Judge saying that they are the owners of the ground floor of the building in question. The private respondents are the owners of the first floor and the terrace. The first floor and the terrace have suffered serious damage by reason of natural wear and tear, which has caused cracks to develop in the building. Through such cracks and otherwise, there is water seepage from the first floor to the ground floor, which is in occupation of the

writ petitioners causing serious inconvenience to them.

The learned Single Judge permitted the writ petitioners to undertake the necessary repair work at their own risk and cost without causing any disturbance to the other respondents. The operative portion of the order under appeal reads as follows:

“The petitioners shall undertake the repair work at their own risk and cost without causing any disturbance to the other respondents. The respondent nos.11 and 12 shall provide access to the petitioners for the repairing work as would be directed by the corporation authorities. Such repair work shall be restricted to the report/permission to be issued by the corporation authorities and shall be done under the supervision of an empanelled structural engineer. The structural stability of the building shall not be compromised.

The parties are to cooperate and ensure that the building is saved from going into a ruinous condition.

As the respondent nos.11 and 12 have prayed for some time, let such inspection be made after a month from date upon prior notice to the parties. Thereafter, the entire exercise shall be completed within a period of two months from the date of inspection.”

The writ petitioners/appellants say that the order impugned is otherwise quite acceptable, excepting that the cost of repairs should be borne by the private respondents, who are the owners of the first floor and the terrace which portion of the building

has suffered damage causing seepage of water to the ground floor.

Learned Advocate appearing for the private respondents very fairly states, on instructions, that the private respondents are willing to bear the cost of repair as the repair is to be done to the portion of the building in possession/occupation of the private respondents.

Learned Counsel appearing for the Kolkata Municipal Corporation says that the Corporation has held inspection of the building in question and a report is available, copy whereof is at page 141 of the stay petition. The report indicates the nature and extent of damage and the repairs that need to be effected to the building.

Since there is no serious dispute between the writ petitioners and the private respondents, the parties will cooperate in effecting the necessary repairs to the portions of the building, which require such repairs. The cost is to be borne by the private respondents. In case the writ petitioners or the private respondents feel that they require further guidance from the Corporation, they will be at liberty to seek such guidance.

The order under appeal is modified to the aforesaid extent.

Since we have not called for affidavits, the allegations in the stay application are deemed not to be admitted by the respondents.

MAT No.370 of 2022 stands disposed of along with IA CAN 1 of 2022.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after compliance with all the necessary formalities.

(Kausik Chanda, J.)

(Arijit Banerjee, J.)