

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE CIVIL JURISDICTION

APPEAL FROM ORDER NO.799 OF 2022
IN
INTERIM APPLICATION NO.17335 OF 2022
WITH
INTERIM APPLICATION NO.17288 OF 2022
IN
APPEAL FROM ORDER NO.799 OF 2022

Mr. Keerthi N. Thakker & Others .. Appellants.

v/s.

Municipal Corporation for Greater
Mumbai & Others .. Respondents.

Mr. Manoj Kumar Upadhyay with Sumandevi Yadav, for the Appellants.

Mr. R. Y. Sirsikar, for Respondent No.1- MCGM.

Mr. Shanay Shah with Mr. Dharmesh Pandya i/b. Ashwin Pandya & Associates, for Respondent Nos.2A to 2D.

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CORAM:- M. S. KARNIK,J.
DATE :- 4th OCTOBER, 2022.

P C.:

Heard learned Counsel for the Appellants.

2 The learned Counsel for the Appellants made an attempt to challenge the order passed by the City Civil Court on merits. However, in the light of the order dated 7th May, 2021 passed by this Court, I clearly indicated that Appellants cannot now address this Court on merits. The Appellants have not complied with the directions of this Court. The order dated 7th May, 2021 reads as follows:-

“ *Heard.*

2. *Mr. Manoj Upadhyay, learned counsel for*

the Applicants submitted that the praecipe dated 27.04.2021 refers to a notice issued by the Municipal Corporation for disconnection of water and electricity supply within three days and therefore there is extreme urgency in the case. Today, he has submitted that this notice was issued on 13.03.2021 and posted on the suit premises.

3. Ms. Madhuri More, learned counsel appearing for the Municipal Corporation submitted that there has been no disconnection of the essential services and more specifically some members of the the three families who are occupying the suit structure are also suffering from Covid. She submitted that the suit structure is classified in C-1 category and is in a precarious state endangering the life of the occupants.

4. Considering the present covid pandemic situation it is imperative that the Applicants make an earnest effort to shift out of the suit structure at the the earliest. Though the timings are restricted to move out, the Applicant shall take assistance of social media if so required to scout for alternate accommodation and move out of the suit structure within a period of four weeks from today. Interim Application is not disposed of and is kept for further orders till the next date. The Applicants will file affidavit cum undertaking in this Court within a period of one week from today stating that in the event of any mishap it shall be the sole responsibility of the Applicants who are occupying the suit structure. Further it shall also be the responsibility of the Municipal Corporation to ensure that no mishap occurs in the suit structure in the next four weeks and therefore the concerned Executive Engineer from the Building and Factories Department of K-West Ward of the Municipal Corporation shall visit the suit premises in the next two days to carry out if any fortification if it is required so as to ensure that no calamity or untoward incident takes place at least upto four weeks till the time that the Applicants arrange for

alternate accommodation for themselves.

5. *Respondent Nos.2(A) to 2(D) are also present before the Court today. They are landlords of the suit structure. It shall be the duty of the owners and the landlords to maintain the suit structure in the interregnum till the Applicants are in a position to move out to the alternate accommodation. The landlords or some representative of the landlords shall accompany the officer of the Municipal Corporation to see what specific and immediate repairs are required to fortify the structure to avoid any incident during the aforesaid period of four weeks. This order is specifically passed on humanitarian grounds because it is evident that due to the covid situation, there is a complete shut down and lockdown and therefore the Applicants shall find a little difficulty to move out freely to scout for alternate accommodation.*

6. *Landlords and officers of the Corporation shall be given access by the Applicants for the purpose of inspection and immediate repairs for fortification of the suit structure.*

7. *Stand over to 07.06.2021.*

Even the order dated 9th August, 2021 passed by this Court records that, *prima facie*, it appears that the order dated 7th May, 2021 thereby granting four weeks time to the Appellants for vacating the suit premises, have not been complied with by them. The order makes reference of settlement talks that were going on and the settlement talks were failed.

3 Reading of the order dated 7th May, 2021 makes it clear that only on humanitarian grounds and due to Covid shut-down, this Court had permitted the Appellants to occupy the structure for a period of four weeks.

4 This Court clearly observed in para 4 that the Appellants scout for alternate accommodation and move out of the suit structure within a period of four weeks from 7th May, 2021. In this view of the matter, it is not open for me to hear the Appeal on merits. Appellants must comply with the order dated 7th May, 2021.

5 The learned Counsel for the Appellants submitted that the Appellants be paid royalty/ rent by the landlords. It is submitted that whereas the other tenants who have vacated the suit premises are being given alternate premises in the redeveloped building on ownership basis but so far as the present Appellants are concerned, they are being offered alternate premises on tenancy basis. Learned Counsel for Respondent Nos.2A to 2C assures this Court that Appellants would be treated / offered in the same manner as the tenants of the adjoining building who have vacated the premises.

6 Learned Counsel for the Appellants, on instructions of Mr. Keerthi N. Thakker, Mr. Mukesh J. Kotadia, who are personally present and on the instructions of Mr. Kedar N. Mehta, submits and undertakes that they will vacate the suit premises within 60(sixty) days from today. Such undertakings to be filed within one week from today in this Court.

7 In view of the disposal of the Appeal from Order itself, nothing survives in Interim Application and the same is also disposed of as infructuous.

(M.S.KARNIK, J.)