

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**APPEAL FROM ORDER NO.305 OF 2022  
WITH  
INTERIM APPLICATION NO.2214 OF 2022  
IN  
APPEAL FROM ORDER NO.305 OF 2022**

**ABDUL QADAR ABDUL SHAKOOR )...APPELLANT**

**V/s.**

**THE MUNICIPAL CORPORATION OF GREATER)  
MUMBAI )...RESPONDENT**

Mr.Pradeep Thorat i/by. Mr.J.S.Yadav, Advocate for the Appellant.  
Mr.Dharmesh Vyas a/w. Mr.Om, Suryavanshi i/b. Mr.Sunil  
Sonawane, Advocate for the Respondent – MCGM.  
Mr.V. P. Sakharkar, Sub-Engineer, Building, B Ward, present in  
Court.

**CORAM : SMT.BHARATI DANGRE, J.**

**DATE : 6<sup>th</sup> APRIL 2022**

**P.C. :**

1 Heard learned counsel Mr.Thorat for the appellant and  
Mr.Vyas, learned counsel for the respondent – Corporation.

2 With the assistance of the learned counsel, I have perused the compilation of documents which include the sanctioned maps.

3 The appeal is filed by the appellant, who is the plaintiff in L.C.Suit No.760 of 2022 filed before the City Civil Court at Bombay, who assails the notice dated 21<sup>st</sup> October 2020 issued by the Corporation under Section 354A of the Mumbai Municipal Corporation Act and further order dated 15<sup>th</sup> March 2022 passed by the Executive Engineer, B Ward, in respect of the suit building. A restraint order is sought against the Corporation from executing the impugned orders.

4 In the plaint, the plaintiff has specifically asserted that he is a tenant in respect of premises being Room No.5/B, situated at Uttam Terrace, 2<sup>nd</sup> Floor, Zakaria Masjid Street, Pydhonie, Mumbai. The suit premises are thus Room No.5/B, situated on 2<sup>nd</sup> floor and the plaintiff is concerned with the suit premises.

5 The learned counsel for the appellant would submit that there is no clarity in the notice that is issued on 21<sup>st</sup> October 2020 since the schedule of the said notice makes a reference to unauthorized reconstruction of building.

6 The counsel for the appellant would submit that the building in which the appellant is located is declared as a Cess building and MHADA was permitted to carry out repairs to the said building through Mumbai Building Repairs & Reconstruction Board (M.B.R.&R). Pursuant to the same, work order was issued to a private party to carry out the necessary repairs. In the meantime, a speaking order was issued on 15<sup>th</sup> March 2022 to the owner/occupier of 132, Zakaria Masjid Street, Mumbai, where the Executive Engineer (Designated Officer, Building and Factory Department, B Ward) would clarify, the notice by stating that after going through the work order and repair plan of the Executive Engineer, M.B.R.&R, it may be concluded that construction above 5<sup>th</sup> floor is unauthorized. It is further clarified

that the notice is about the construction above 5<sup>th</sup> floor and this construction is sought to be removed, within a period of seven days, in absence of which, an action under Section 354 is contemplated.

7      Learned counsel for the Corporation Mr.Vyas has invited my attention to the plan prepared by MHADA for preparing estimate for structural repairs only, as per the existing building at site and this refers to ground + five floors. Whatever repairs, therefore, to be carried out, are within the permissible limits of ground + five floors, in form of repairs to the building. Relying upon the said document, it is submitted that the speaking order, therefore, clarified that the construction above those floors is unauthorized.

8      This resolves the dispute, as far as the appellant is concerned, since he is located on 2<sup>nd</sup> floor of the building and the unauthorized portion covered by the notice is beyond 5<sup>th</sup> floor of the building. Learned counsel Mr.Vyas, on instructions of Mr.V. P.

Sakharkar, Sub-Engineer, Building, B Ward, who is present in Court, makes a specific statement that Room No.5/B situated on the second floor of the building is not covered within the scope/schedule of the notice dated 21<sup>st</sup> October 2020.

9 In the wake of the aforesaid statement, the impugned order cannot be sustained, which refuse ad-interim relief in favour of the plaintiff. Infact, in the wake of the statement, even the suit of the appellant/original plaintiff seeking declaration and injunction may not survive and the plaintiff may not choose to prosecute the suit itself, since he is the sole plaintiff and seeks protection qua his structure i.e. Room No.5/B situated at Uttam Terrace, 2<sup>nd</sup> Floor, Zakaria Masjid Street, Pydhonie, Mumbai. Ultimately, it is for the plaintiff to take appropriate steps about the suit.

10 By recording the aforesaid statement made by the learned counsel for the Corporation, the appeal from order stands disposed of.

In view of disposal of the appeal from order, Interim application No.2214 of 2022 also stands disposed of.

(BHARATI DANGRE, J.)

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signed by  
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VILAS  
KHATATE  
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