

PMB

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

**APPEAL FROM ORDER NO.622 OF 2022
WITH
INTERIM APPLICATION NO.9798 OF 2022**

Kishor Pandurang Koli ..Appellant
VS.
Municipal Corporation of Greater
Mumbai ..Respondent

Mr. A M. Saraogi for appellant.
Mr. R. Y. Sirsikar for respondent-MCGM.

CORAM : M. S. KARNIK, J.
DATE : NOVEMBER 14, 2022.

P.C. :

1. Heard learned counsel for the parties.
2. It is the contention of learned counsel for the appellant that under Section 342 of the Mumbai Municipal Corporation Act, 1888 (hereafter "the MMC Act", for short) the person who shall intend – (a) to make any addition to a building or change of existing user, (b) to make any alteration or repairs to a building involving the removal, alteration or re-erection of any part of the building except tenantable repairs has to give a notice to the Commissioner under Section 344 of the MMC Act. Learned counsel submits that the prayers made in the plaint would itself reveal that the declaration is sought that the MCGM has no rights to

prevent the plaintiff in carrying out tenantable repairs to his premises as stated in Section 342 of the MMC Act. Learned counsel submits that as it is not obligatory for the appellant to give a notice under Section 342 of the MMC Act if the plaintiff carrying on the tenantable repairs, there was no need to have filed the suit. The suit is misconceived. Learned counsel for the appellant submits that in such view of the matter, he undertakes to withdraw the suit. Statement is accepted.

3. If it is the case of the plaintiff that they are carrying on tenantable repairs and therefore there is no requirement of a notice under Section 344 of the MMC Act, then it is for the plaintiff to proceed in carrying out tenantable repairs in accordance with law. This however will not preclude the MCGM from taking appropriate action in accordance with law as according to learned counsel for the MCGM, the structure is in a dilapidated condition.

4. Appeal From Order stands disposed of.

5. In view of the disposal of the Appeal From Order, nothing survives for consideration in the interim application and the same stands disposed of accordingly.

(M. S. KARNIK, J.)