

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 678 OF 2022

WITH

INTERIM APPLICATION NO.10147 OF 2022

IN

APPEAL FROM ORDER NO. 678 OF 2022

Glen Croft Co-operative Housing Society Ltd ... Appellant

Versus

Ashiwini Suhas Tuljapurkar and Anr ...Respondents

Mr. Simil Purohit i/b Mr. Arshil Shah with Mr. Vishal Raman,
Mr.Parisha Shah, Mr. Rasesh Shah, Ms Smita Durve for the Appellant.
Mr. Mayur Khandeparkar a/w Mr. Chirag Dave i/b Ms Deepa Kamath
for Respondent No.1.

CORAM : ANUJA PRABHUDESSAI, J.

RESERVED ON : 8th JULY, 2022.

PRONOUNCED ON : 2nd AUGUST, 2022.

P.C. :

1. With consent, heard finally at the stage of admission.

2. The Appellant, who shall be hereinafter referred to as the
Plaintiff has challenged Order dated 15.6.2020, whereby the learned

Judge is stated to have modified the previous Order dated 9.6.2022 and allowed the Respondent-Defendant to carry out repairs inside their Flat in Flat No.2102 on the 21st floor of the building in the Plaintiff-Society, without affecting durability and life of the building.

3. The Respondents, who shall be hereinafter referred to as 'the Defendants' are the members of the Plaintiff-society. The Defendants had purchased the suit flat on 25/04/2002. The Defendants vide email dated 03/02/2022 sought permission from the Plaintiff to carry out certain 'civil work' in the suit flat. It is the case of the Plaintiffs that the Defendants had given an undertaking not to carry out any alteration in the architectural elevation of the building or make any changes to the external windows. The Plaintiff granted permission to the Defendant subject to deposit of Rs.60,000/-, to make good damage or loss, if any, caused by the repairs.

4. The plaintiff claimed that the Defendants, under the guise of carrying out civil work, demolished internal walls and

removed the external windows and thus carried out structural alteration to the flat. The Plaintiffs claimed that the nature of repairs carried out by the Defendants affects the durability of the structure. Hence, the Plaintiff filed a Suit for perpetual injunction, with a notice of motion for interim relief.

5. By order dated 1.6.2022, the Trial Court granted ad-interim relief and directed the Defendants to maintain status quo in respect of work of alternation/addition till the next date.

6. On the subsequent date of hearing i.e. on 09/06/2022, the Plaintiff raised a grievance that the Defendants had increased the height of the windows and claimed that the material changes made by the Defendants were likely to affect durability of the building. The learned Judge, after considering the photographs placed on record, restrained the Defendants from carrying out any such work which would affect the structure and granted relief in terms of prayer clause (a) in notice of motion.

7. On 15/06/2022, on the basis of praecipe under the caption of "speaking to the minutes", filed by the Defendants, learned Judge clarified that by the previous order dated 09/06/2022 the Defendants were only restrained from carrying out work, which would materially affect durability and life of the structure. Learned Judge, observed that the Plaintiff had permitted the Defendants to carry out internal repairs /renovation of the suit flat and that the Defendants cannot be expected to live in their flat without tiles, electricity fittings, etc. Aggrieved by this order, the Plaintiff has filed this appeal.

8. A perusal of the impugned order reveals that on 15/06/2022 the Defendants had brought to the notice of the Court that vide notice dated 11/06/2022 they had informed the Plaintiff that they would be commencing plumbing and electric work, fixing of bathroom and floor tiles, furniture, kitchen platform, etc. The Defendants had alleged that the Plaintiff had objected to the said

repairs on the ground that by order dated 09/06/2022 the Court had granted relief in terms of prayer clause (a) of notice of motion and such construction activity would be in defiance of the court order. It is under these circumstances that the precipe was filed.

9. A perusal of order dated 09/06/2022 reveals that the learned Judge had restricted the Defendants from carrying out any such material changes which would affect durability and life of the building. Though the order dated 09/06/2022 also records that relief was granted in terms of prayer clause (a), it also indicates that both parties were directed to advance arguments on notice of motion after service of notice/summons on Defendant No.2. This fact clearly indicates that the learned Judge had not disposed of the notice of motion vide order dated 09/06/2022 in terms of prayer clause (a), but had only restrained the Defendants from carrying out any work affecting stability and durability of the structure. It is also pertinent to note that by the impugned order, learned Judge has not modified the order dated 09/06/2022 but has only clarified that the

Defendants were only restrained from carrying out such structural changes, which would affect the life and durability of the building. This clarification was necessitated in view of the response of the Plaintiff to notice dated 11/06/2022.

10. The records prima-facie indicate that the Appellant-Plaintiff have permitted Defendants to repair the floor, bathroom, electricity wiring, etc. subject to security deposit of Rs 60,000/-. It is not in dispute that the Defendants have deposited the said amount. Hence, the Defendants, are entitled to carry out internal repairs as per the permission granted by the Plaintiff Society. As rightly observed by the learned Judge the Defendants, who are the owners of the flat, cannot be expected to live in a flat without flooring, electricity, plumbing, etc. In paragraph 9 of the affidavit-in-reply the Defendants have given details of the work, which is yet to be completed. A statement has been made that the Defendants shall not carry out any other repairs or renovation, which will affect the structural stability and durability of the building.

11. Under the circumstances and in view of the above, the appeal is dismissed. Pending application, if any, stands disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)