

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

**CIVIL APPLICATION NO. 1390 OF 2019
IN
WRIT PETITION NO.6936 OF 2019**

Leena Harivadan Patel

..Applicant.

v/s.

Mrs. Sunanda Rajendra Kumbhat & Ors.

..Respondents

Mr. Aseem Naphade a/w. Swapnil Newaskar i/b. N.P.Wagle for the Applicant.

Mr. Bimal Bhabhda for the Petitioner.

**CORAM : ANUJA PRABHUDESSAI, J.
DATED : 13th SEPTEMBER, 2022.**

P.C.

1. By this application, the Applicant has sought leave to carry out tenantable repairs in flat No.1, situated on 2nd floor of 459, Arya Bhuvan Building, Mumbai.

2. By order dated 17.11.2017, this Court had restrained the Respondents from carrying out any civil or structural repair work in the disputed premises and not to undertake any repair or renovation of any kind without leave of the Court. The dispute is in respect of five rooms situated on the 2nd floor of the building. In para 14 of the impugned judgment, the Appellate Court has observed that the dispute is not in respect of the entire second floor and that besides the suit premises, there

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are two other tenements on the same floor which are in possession of the tenants. The Applicant /Respondent No.1 claims that the disputed flat is flat no.3 which comprises of 5 rooms and admeasures 263.18 sq.fts. whereas he is in possession of flat no.1 having 8 rooms with total area of 1590 sq.ft. It is stated that flat no.1 is not in habitable condition besides being in a deplorable condition. It is exposed to leakage and damages and there is urgent need to carry out tenantable repairs. The Applicant has placed on record the report submitted by the Architect, a perusal of which reveals that the following repairs are required to be carried out on urgent basis , (i) electrical work, (ii) Painting, (iii) Plastering, (iv) Replacing of aluminum windows etc. The details of the repair work have been specified and such repairs are permissible under Section 342 of the Mumbai Municipal Corporation Act.

3. Under the circumstances, the Applicant is permitted to carry out the repairs as specified in the Architects report dated 12.07.2018, in respect of flat no. 1, admeasuring 1590 sq. fts. which is described in the Commissioner's report dated 21.7.2018. The said repairs shall be subject to the final outcome of the suit and shall be without prejudice to the rights of the parties and subject to the requisite permission from the concerned authorities.

4. Civil Application stands disposed of.

(ANUJA PRABHUDESSAI, J.)