

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

***APPEAL FROM ORDER NO.270 OF 2021
WITH
CIVIL APPLICATION NO.13 OF 2021***

Mr. Riteshkumar Jaylal Singh ...Appellant

Vs

Maharashtra Housing and Area Development
Authority and Ors. ... Respondents

...

Ms. Shweta R. Rathod with Ms. Bijal Gandhi with Ms. Koshiki
i/by Elixer Legal Services for the Appellant.

Ms. Sayli Apte i/by Mr. P.G.Lad for Respondent Nos.1 and 2.

Mr. Arshad Shaikh i/by Mr. Abdul Bari Ansari for Respondent
Nos.3 and 4.

CORAM : SANDEEP K. SHINDE J.

DATE : FEBRUARY 15, 2022.

P.C. :

Heard.

2 Executive Engineer, Mumbai Building Repairs and Re-
construction Board, vide notice dated 26th October, 2016 ('Suit
Notice' for short) called upon Mr. Riteshkumar Jaylal Singh, Plaintiff,
to vacate the premises being Shop No.3 ('Said Shop' for short) within

seven days, failing which, eviction would follow, in exercise of powers under Section 95A of the Maharashtra Housing and Area Development Authority Act, 1976 as amended in 1988 (**‘MHADA Act’** for short).

3 Mr. Riteshkumar Jaylal Singh challenged legality of the suit notice by instituting Long Cause Suit (Stamp) No.12354 of 2016 in the City Civil Court, Greater Bombay. Pending suit, he moved an application seeking stay to execution of the suit notice, however, learned Judge declined to stay its’ operation. Whereafter, Plaintiff filed this Appeal From order Under Order 43 Rule 1(r) read with 104 of the Code of Civil Procedure, 1908 (“CPC” for short).

4 Indisputably, pending Suit/Appeal From Order, the suit notice has been acted upon. As a result, building and shop in question were demolished. Whereafter, respondent no.3 re-developed-re-constructed the building. As a consequence, appeal is rendered infructuous.

5 Be that as it may, evidence brought on record by the respondents, implies that, ‘occupancy’ of the plaintiff or of his predecessor-in-title in the said shop, was disputed, in-as-much as possession of the said shop was recovered by the officials of the MBR & R Board from one, Mr. Daud Shaikh during eviction proceedings under Section 95A of the MHADA Act. In the context of this fact, the issue as to ‘tenancy’ and/or of ‘occupancy’ in the suit shop is the subject matter of R.A.E. Suit No.926 of 2012 and R.A.D. Suit No.514 of 2013 instituted by and against the appellant in the Court of Small Causes at Bombay. That being so, the Mumbai Building Repairs and Re-construction Board vide order dated 8th January, 2022 after hearing interested parties, held that decision for occupancy of the said shop no.3 would be subject to outcome of R.A.E.Suit No.926 of 2012 pending in the Court of Small Causes, Mumbai.

6 For all that reasons, the appeal being rendered infructuous, it is dismissed.

7 As the appeal itself is disposed of , nothing survives in the Civil Application therein and same is also disposed of.

(SANDEEP K. SHINDE, J.)