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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO.829 OF 2021
IN
SUIT NO.39 OF 2018

Hotel Kum Kum

...Applicant/
Plaintiff

Versus

Navneet CHS Ltd. and Ors.

...Defendants

Chirag Yogin Mody, partner of the Plaintiff.
Yatin Khochare i/b. Bharat Joshi for the Plaintiff.
Mr. T.D. Deshmukh for Defendant – MHADA.
Ms. Pooja Yadav for MCGM.
Mr. Yatin R. Shah, Defendant Nos.1 to 3.

CORAM : R.I. CHAGLA J

DATE : 17TH OCTOBER, 2022

ORDER :

1. Heard learned Counsel for parties.
2. By the present Interim Application, the Applicant is seeking temporary injunction restraining Defendant No.1 and its members from parking their cars, vehicles, articles and things in the

suit strip for a period of 14 weeks from 1st April, 2021 or any other date fixed by this Court, to facilitate the structural repairs of the Applicants building on the land bearing C.S. No.262 of Tardeo division. Further, consequential relief has been sought for.

3. By the prior order dated 5th February, 2018, this Court had considered similar relief being sought in Notice of Motion No.168 of 2018 and the same reason was given that in view of the the Applicant intending to carry out repairs, the Defendants be restrained from parking their vehicles. This Court had recorded that admittedly, the Defendants are parking their vehicles since the year 1972. On a query raised by the Court as to whether the Defendants will be allowed to park their vehicles after the alleged repair work is over, the learned Advocate for the Plaintiff had answered in the negative and submitted that the Defendants have no right to park their vehicles. This Court had considered that the reason given that the Plaintiffs intends to carry out repairs is a mere excuse to stop the Defendants from parking their vehicles which they have been doing since last 45 years.

4. Thereafter, the Mumbai Building Repairs and

Reconstruction Board, Mumbai has issued notice dated 5th February, 2019 which is for completion of formalities required before starting the repair work. Terms and conditions have been set out in the notice dated 5th February, 2019.

5. The learned Advocate appearing for the Applicant / Plaintiff states that, repair works is required to be carried out in respect of the subject building. He states that the shifting of the vehicles being parked by the Defendants shall only be required for the purpose of carrying out repairs of the subject building and upon carrying out repairs, the Defendant No.1 and its members will be permitted to park their vehicles, articles and things in the Suit strip. This will be without prejudice to the rights and contentions of the Plaintiffs. The statement is accepted.

6. Accordingly, Defendant No.1 and its members shall move their vehicles, articles and things in the Suit strip for a period of 14 weeks from the date of this Order to facilitate structural repairs of the subject building on land bearing C.S. No.262 of Tardeo Division.

7. The partner of Applicant / Plaintiff shall file Affidavit of

Undertaking to the effect that upon expiry of 14 weeks and / or the structural repairs of the subject building of land bearing C.S. No.262 of Tardeo Division being over, whichever is earlier, the Defendants will be permitted to park their vehicles, cars, articles and things in the Suit strip. This will be without prejudice to the rights and contentions of the parties in the present Suit.

8. Needless to state that as soon as the repairs of the subject building is over, the Applicant / Plaintiff and / or its contractors shall remove the debris from the suit Strip on which Defendant No.1 and its members are to park their cars, vehicles, articles and things.

9. Interim Application is disposed of in the above terms.

[R.I. CHAGLA J.]