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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 72 OF 2023
with
INTERIM APPLICATION NO.890 OF 2023
with
INTERIM APPLICATION NO.889 OF 2023

Mohammed Yakoob Shaikh ..Appellant
Vs.
The Municipal Corporation of Gr.Mumbai. ...Respondents

Mr.Pradeep Thorat with Mr. B. S. Shukla, for the Appellant.

Ms.Smita Tondwalkar, for Respondent No.1-MCGM.

Mr. V. T. Dube, for the Intervener.

CORAM : G.S. KULKARNI, J.

DATE : FEBRUARY 1, 2023

P.C.:

1. Not on board. Upon mentioning taken on board on a praecipe as moved on behalf of the appellant.

2. Heard Mr.Thorat, learned Counsel for the appellant/plaintiff and Ms.Tondwalkar, learned Counsel for the Corporation. This appeal is filed impugning an order dated 20 January 2023 passed by the City Civil Court, Bombay, whereby ad-interim relief has been refused on the draft notice of motion filed by the appellant/plaintiff in Civil Suit filed by the appellant/plaintiff being Long Cause Suit no.183 of 2023. It appears that the appellant/plaintiff had earlier moved the Division Bench of this Court in Writ Petition (l) No.20087 of 2022. The Division Bench disposed of the petition considering the stand taken by the

appellant/plaintiff that the building is not in dilapidated condition and appointed M/s.Shetgiri & Associates, Structural Engineers to conduct structural audit in respect of the said building, in terms of what has been observed by the Division Bench in paragraph 3 of the said order. It appears that M/s.Shetgiri & Associates submitted its report recording that the building is in a ruinous condition and confirmed that the building is rightly categorized under C-1 category.

3. The observations of the Division Bench as made in the order dated 7 October 2022 are required to be noted, which read thus:-

> "I. The petitioner has filed this petition to impugn the Technical Advisory Committee Report dated 1st September, 2021 and consequently the notice dated 13th June, 2022 issued by the Municipal Corporation under Section 354 of the Mumbai Municipal Corporation Act,1888.
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> 2. The learned counsel for the petitioner and respondent no.2 (newly added party) agreed that no reasons are required to be recorded by this Court while disposing off this petition.
>
> 3. The learned counsel appearing for the petitioner and the respondent no.2 jointly agreed that this Court may appoint M/s. Shetgiri and Associates to visit the writ building consisting of ground plus three upper floors as described in prayer clause (a) of the petition and to submit a report as to whether the said building would fall under C-1 category or whether the said building can survive on carrying out any repairs or not.
>
> 4. It is the case of the petitioner that in pursuance of the order passed by the City Civil Court, the original petitioner had already carried out the requisite repairs and thus the building does not even require any additional repairs. This statement of Mr.Thorat. learned counsel for the petitioner, is disputed by the learned counsel for respondent no.2.
>
> 5. Without going into the issue whether any repairs are carried out by the petitioner or not, the structural auditor appointed by this Court shall independently carry out an investigation with all necessary appropriate tests and submit his opinion before this Court on the above referred issues within four weeks from the date of communication of this order.

6. It is agreed between the petitioner and respondent no.2 that the 'fees and expenses of the said consultant i.e. M/s. Shetgiri and Associates, if any,. would be borne by the petitioner and the respondent no.2 equally within Six weeks from today.

7. A copy of the report shall be submitted to both the parties. The petitioner is directed to furnish a copy of such report that would be submitted by M/s. Shetgiri and Associates to the Assistant Commissioner, L-Ward, for their information and further action within three days from the date of receipt of such report.

8. Municipal Corporation would be at liberty to initiate further action after receipt of such report from M/s. Shetgiri and Associates as may be advised by, adopting all appropriate procedures in accordance with law.

9. Mr.Thorat, learned counsel for the petitioner, on instructions, undertakes that if his client occupies the premises , during this period, it will be at his own risk and he shall not hold any of the respondents responsible in case any untoward incident occurs.

10. It is made clear that the Municipal Corporation shall not take any coercive steps against the petitioner for implementing the said impugned notice under Section 354 of the Mumbai Municipal Corporation Act issued on 13th June 2022 till a report is submitted by M/s.Shetgiri and Associates and for a period of three weeks from the date of communication of the said report by the petitioner to the Municipal Corporation, if the said report is adverse against the petitioners.

11. It is made clear that during this period, the petitioner shall not carry out any alterations or repairs without prior sanction from the Municipal Corporation.

12. Writ petition is disposed off in the aforesaid terms.

13. No orders as to costs."

(emphasis supplied)

4. Thus two important facets are prominent from the reading of paragraph (3) and (8) of the above order passed by the Division Bench. Firstly, that the appellant itself had agreed for appointment of

M/s.Shetgiri and Associates as structural auditors who were to conduct inspection and submit a report as to whether the suit building would fall under 'C-I' category or whether the suit building can survive, on carrying out any repairs. Secondly and most significantly, the Division Bench in paragraph 8 has categorically ordered that the municipal corporation would be at liberty to initiate further action after receipt of such report from M/s.Shetgiri and Associates as may be advised, by adopting all appropriate procedure in accordance with law. Hence, the obvious consequence is that once the report of M/s.Shetgiri & Associates is adverse to the appellant, confirming that the building falls in the 'C-1' category and being dilapidated and dangerous, in such situation the Division Bench has permitted the municipal corporation to proceed ahead. Such action on the part of the municipal corporation is now sought to be stopped in the suit as filed by the appellant on which the impugned order has been passed by the City Civil Court. Thus, what is sought to be asserted by the appellant/plaintiff is against what has been observed by the Division Bench in paragraph (8) of its order.

5. In the above circumstances, Mr.Thorat considering such observations as contained in paragraphs (3) and (8) of the orders passed by the Division Bench, would fairly submit that a clarification in regard to the above position would be required to be obtained by the appellants/plaintiff from the Division Bench, to the effect, whether it would be at all permissible for the appellant/plaintiff to re-agitate in a second round that the building is not in dilapidated condition in the proceeding of the suit in question as now filed by the appellant/plaintiff before the City Civil Court at Bombay and on which the impugned order has been passed.

6. In these circumstances, Mr.Thorat would submit that the appellant/plaintiff would approach the Division Bench by an appropriate

application so as to seek clarification on such issue. However, in doing so Mr.Thorat reiterates and confirms the statement recorded in paragraph (9) of the order dated 7 October 2022 passed by the Division Bench which he states is not only filed on behalf of the appellant/plaintiff but also by the other occupants who are stated to be 21 in number. The statement of Mr.Thorat is accepted. It is however further directed that all the occupants of the building shall occupy the premises at their own risk and they shall not hold the municipal corporation and/or any of its officer or any other person responsible, in the event of an unfortunate collapse.

7. In view of the above discussion, and considering the observations of the Division Bench in the order as noted above, the appellant is at liberty to decide the further course of action and as may be permissible to the appellant. All contentions in that regard are expressly kept open.

8. At this stage it is informed that the Corporation has already disconnected the electricity supply and water connection. Needless to observe that the appellant is at liberty to agitate such concerns before the Division Bench.

9. Accordingly, the appeal would not warrant further adjudication. It is disposed of. No costs.

10. In view of disposal of the appeal, pending Interim Applications would not survive, the same is disposed of.

[G.S. KULKARNI, J.]