

Dusane

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

**INTERIM APPLICATION NO. 13242 OF 2023
IN
WRIT PETITION NO.1220 OF 2023**

Chandrakant Sadhu Shetty ...Applicant

In the matter of :

Chandrakant Sadhu Shetty ...Petitioner

V/s.

Theresa Mathew Fonseca (deceased) ...Respondents

Dr. (Mrs.) Marionette B. Pereira
(deceased),

Mr. Ivol Pascal Pereira & Ors.

Mr. Amogh Singh i/by Mr. S.Q. Qureshi for
Applicant/ Petitioner.

Ms. Sanskruti Yagnik i/by Mr. Sunil Duey for
Respondents Nos. 1 to 7.

Mr. A.Y. Sakhare, Senior Counsel a/w Mr. R.Y.
Sirshikar for MCGM.

**CORAM: MADHAV J. JAMDAR, J.
DATE: 28th July 2023**

P.C.:

1. By order dated 3rd May 2023, the Writ Petition No. 1220 of 2023 was disposed of in view of the arrangement, which has been arrived at between the parties. As per the said arrangement, tenantable repairs were agreed to be carried out

by the Respondent Nos. 1 to 7-landlords. Accordingly, the landlords started repairs. However, in the meanwhile when the landlord were carrying out the repairs, BMC issued notice dated 18th May 2023. According to the Petitioner and the Respondent Nos. 1 to 7- landlords, they were only carrying out the tenantable repairs. In view of said development, the Interim Application No. 13242 of 2023 has been filed by the original Petitioner seeking following prayers:

"(a) **The Respondent Nos. 1 to 7 may be allowed to carry on the tenantable repairs** to the suit premises as per the orders of this Hon'ble Court and as per the minutes of repairs immediately.

(b) The M.C.G.M. officers, Respondent No. 9 may be directed to withdraw the notice and not to interrupt or obstruct the repair work to the suit premises as the same is in the definition of tenantable repairs."

(Emphasis added)

2. Mr. Sakhare, learned Senior Counsel appearing for Respondent Nos. 8 and 9 i.e. MCGM, stated that the MCGM will have no objection if only tenantable repairs are carried out. Accordingly, an affidavit of Santosh A. Bhendwadekar, Assistant Engineer (Building & Factory), R/South Ward MCGM, Mumbai dated 25th July 2023 has been filed.

3. Both the learned Counsel of the Applicant/Petitioner and Respondent Nos.1 to 7 have submitted 'Minutes of Order'. The said "Minutes of Order" are signed by the learned Advocate appearing for the Applicant as well as Applicant i.e. Chadrakant Sadhu Shetty. The said Minutes of Order are also signed by learned Advocate appearing for Respondent Nos. 1 to 7 and by Respondent No.4, one of the landlord/co-owner. Learned Advocate appearing for the Respondent Nos.1 to 7 on instructions state that although the Minutes of Order are signed only by Respondent No. 4, the same has been signed on behalf of Respondent Nos. 1 to 7 and they are accepted to all of them. The said Minutes of Order are taken on record and marked 'X' for identification.

4. Learned Counsel appearing for the Applicant and Respondent Nos. 1 to 7 state that the Applicant and Respondent Nos. 1 to 7 shall carry the repairs strictly as set out in the Minutes of Order and the said statement is accepted as undertaking given to this Court.

5. Mr. Sakhare, learned Senior Counsel appearing for MCGM states that the repairs mentioned in the said Minutes or Order are tenantable repairs and therefore the MCGM will have no objection to carry out the same.

6. It is admitted position that the Respondent Nos. 1 to 7 i.e. landlords will be carrying out the repairs and therefore it is directed that the Respondents Nos.1 to 7 shall carry out the repairs of the suit premises strictly in accordance with the terms mentioned in the Minutes of Order.

7. It is submitted by Mr. Singh, learned Counsel appearing for the Applicant that the suit premises in the present case admeasures about 1034 sq. feet and the same also includes the premises, which are subject matter of Appeal from Order (Stamp) No. 4984 of 2020. He states that when the landlord was carrying out the repairs in terms of order dated 3rd May 2023 passed in Writ Petition No. 1220 of 2023, the roof of the premises, which are subject matter of Appeal from Order (Stamp) No. 4984 of 2020 had collapsed.

8. Learned Counsel appearing for the Respondents has pointed out order dated 16th March 2020 passed by a learned Single Judge in Interim Application No. 1 of 2020 in Appeal from Order (Stamp) No. 4984 of 2020. By the said order, parties were directed to maintain status-quo and the statement was recorded of the Applicant i.e. the present Petitioner Chandrakant Sadhu Shetty that the Applicant will not make any material alterations or changes in the nature of the suit structure. As the roof of the premises, which are subject matter of said Appeal

from Order (Stamp) No. 4984 of 2020 has collapsed while carrying out repairs in terms of order dated 3rd May 2023 passed in Writ Petition No.1220 of 2023, the landlord i.e. the present Respondent Nos. 1 to 7 are permitted to install the roof in terms of Section 342 of the MMC Act, 1888. However, it is clarified that if any other repairs are required with respect to the premises, which are subject matter of Appeal from Order (Stamp) No.4984 of 2020, then the parties to file Interim Application seeking appropriate relief in the said proceedings.

9. Interim Application No. 13242 of 2023 is disposed of in terms of the Minutes of Order and in above terms with no order as to costs.

BHALCHANDRA
GOPAL DUSANE

(MADHAV J. JAMDAR, J.)

Digitally signed by
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Date: 2023.08.03
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