

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 763 OF 2023

1. Usha Harshad Mehta
2. Nikunj Harshad Mehta

...Appellants

Versus

Mumbai Municipal Corporation
of Greater Mumbai Through Assistant
Municipal Commissioner F/N Ward, Mumbai.

...Respondent

...

Mr. Sanjiv A. Sawant a/w Ms. Ruchita Kadam i/by Mr. Samir Suryawanshi, for
Appellants.

Mrs. Smita Tondwalkar, for Respondent – MCGM.

Mr. Sachin S. Bhagat, (J.E.) BMC F/N Ward, present.

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CORAM : SANDEEP V. MARNE, J.

DATE : SEPTEMBER 12, 2023.

P.C.:

1. Admit. With the consent of learned counsels appearing for the
parties, the Appeal is taken up for final disposal.

2. Appellants-Plaintiffs are the owner of Flat Nos.11 & 12. It
appears that during the course of inspection of the flats conducted at the
behest of complainants, it was found that Plaintiffs had demolished the walls
separating Flat Nos.11 & 12. It appears that the wall has been reconstructed

and now only a door exists between the two flats which is treated as unauthorized construction by the Municipal Corporation. Notice dated 28 June, 2023 has been issued under the provisions of Section 354(A) of the Mumbai Municipal Corporation Act, 1888. The City Civil Court has refused to grant ad-interim injunction in favour of Appellants-Plaintiffs in Notice of Motion No.3190 of 2023 filed for seeking temporary injunction.

3. I have heard Mr. Sawant, the learned counsel appearing for Appellants and Ms. Tondwalkar, the learned counsel appearing for Respondent-MCGM.

4. The unauthorized construction alleged in the notice is opening of a door by demolishing portion of the existing brick wall with a view to amalgamate Flat Nos.11 & 12. It appears that during the course of inspection carried out, the entire wall separating the two flats was apparently demolished. Now as per the notice dated 28 June 2023, the allegation is of construction of a door erected for the purpose of amalgamation the two flats. The Appellants-Plaintiff have taken a stand that the nature of work undertaken by him falls within the definition of tenantable repairs within the meaning of Section 342 of the Act of 1888. From the nature of construction in respect of which the notice dated 28 June 2023 is issued, in my view the Appellants-Plaintiffs need

to be given an opportunity to prove his case till decision of Notice of Motion filed for grant of temporary injunction. Now even if the door is demolished on account of refusal of ad-interim relief, till the BM wall is restored, the flats may still remain amalgamated.

5. In that view of the matter, the City Civil Court needs to consider Notice of Motion No.3190 of 2023 and decide the same by hearing both the parties. Whether the work undertaken by Appellants-Plaintiffs would come within the definition of tenantable repairs or whether it would amount to amalgamation of two flats will also be decided by the City Civil Court.

6. Accordingly the Appeal is allowed.

7. The order dated 2 September 2023 passed by the City Civil Court is set aside.

8. There shall be ad-interim protection in favour the Appellants-Plaintiffs in respect of Notice dated 28 June 2023 till decision of Notice of Motion No.3190 of 2023. The City Civil Court shall make an endeavour to decide the Notice of Motion No.3190 of 2023 as expeditiously as possible without being influenced by observations made in this order.

9. With the above directions, Appeal is disposed of.

(SANDEEP V. MARNE, J.)