

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 860 OF 2023

WITH

INTERIM APPLICATION NO. 16350 OF 2023

Mr. Smit Ravindra Nirmal and
Ors.

....Appellants

V/s.

The Municipal Corporation of
Gr. Mumbai & Ors.

....Respondents

Mr. A.S. Khandeparkar, Senior Advocate a/w. Mr. Rushikesh G. Bhagat, Mr. Rohit P. Mahadik, Mr. Vaibhav Kulkarni, Mr. Saurabh Mittal, Mr. Farhan Shaikh i/by. Khandeparkar & Associates, for the Appellants.

Mrs. Smita Tondwalkar, for M.C.G.M.

Mr. Akshay Kapadia, for Respondent Nos.4 and 5.

CORAM : SANDEEP V. MARNE, J.

Dated : 19 October 2023.

P.C. :

1. The challenge in the present Appeal is to the order dated 8 September 2023 passed by the City Civil Court rejecting ad-interim relief in the draft Notice of Motion.

2. It appears that the Municipal Corporation had issued notice under Section 353B of the Mumbai Municipal Corporation Act, 1888 to the suit structure on 7 November 2022. In pursuance of that notice, both landlords as well as the tenants appointed Structural Auditors and upon conduct of structural audit of the building, both the Auditors have submitted their respective reports. It appears that the landlord's Auditor classified the building into C2-A category whereas the Tenant's Auditor has classified the building into C2-B category. Thus as of today, there is no report of the Structural Auditor classifying the building into C-1 category.

1. In pursuance of the classification of the building into C2-A and C2-B categories, it was incumbent upon the Landlord and Tenants to immediately commence the repair works. However both failed to carry out repairs. The Municipal Corporation was therefore left with no alternative but to issue Notice under Section 354 of the Mumbai Municipal Corporation Act on 11 August 2023 calling upon the occupants to vacate the building and to pull down the same.

3. Mr. Khandeparkar, learned Senior Advocate appearing for the Tenants and Mr. Kapadia, the learned counsel appearing for the Landlord would jointly submit that a contractor has already been appointed to carry out structural repairs of the building. However, the contractor is prevented by the Municipal Corporation from carrying out repairs on account of issuance of Notice dated 11 August 2023.

4. In my view, since the Landlords and Tenants have now agreed to carry out repairs to the building, they cannot be prevented from doing so, especially considering the fact that the building is repairable as per both the reports.

5. Accordingly, the present Appeal is disposed of by passing the following order :

(i) The Municipal Corporation shall permit the Landlord and the Tenants to carry out structural repairs to the building as suggested in the structural audit reports. Both the learned counsels would submit that the repair works shall commence within a period of four weeks from today.

(ii) The nominated official of the Municipal Corporation shall carry out periodical visits to the building to ensure that the work of structural audit is conducted by the Contractor nominated by the Landlord and Tenants.

(iii) If the Municipal Corporation observes that the Landlords and Tenants fail to carry out or halt the work of structural repairs to the building, the Municipal Corporation shall be at liberty to take appropriate action in terms of the Notice dated 11 August 2023.

(iv) So long as the structural repairs to the building are carried out, the Municipal Corporation shall not act on the notice dated 11 August 2023.

6. Mr. Khandeparkar, as well as Mr. Kapadia, would submit that in view of the order passed in the present Appeal, the suit would be rendered infructuous and the same can be disposed of. Accordingly both the learned counsels would make a statement that an application would be made before the City Civil Court for withdrawal of the suit.

8. With the above directions, the Appeal is disposed of. With disposal of the Appeal, Interim Application No. 16350/2023 filed for injunction does not survive. The same is disposed of as having become infructuous.

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SANDEEP V. MARNE, J.