

25 October 2023.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 885 OF 2023

IN

NOTICE OF MOTION NO. 4121 OF 2018

IN

B.C.C.C.L.C. SUIT NO. 2937 OF 2018

1. Shri. Ganshi Ranmal Shah and ...Appellants
8 Ors.

V/s.

1. Municipal Corporation of Gr. ..Respondents
Mumbai and 4 Ors.

Mr. O.R. Tiwari, for the Appellants.

Mrs. Smita Tondwalkar, for the Respondents.

CORAM : SANDEEP V. MARNE, J.

Dated : 25 October 2023.

P.C. :

1. The challenge in the present Appeal is to the order dated 4 October 2023 passed by the City Civil Court rejecting Notice of Motion No. 4121/2018.

2. It is an admitted position that in pursuance of conflicting reports of the Structural Auditors submitted by the owners and

tenants, the Municipal Corporation referred the matter to the Technical Advisory Committee (TAC). The TAC has submitted its recommendations to accept the classification of the building into 'C-1' category. In that view of the matter, no fault can be found in the order of the City Civil Court rejecting the Notice of Motion.

3. The learned counsel for the Appellant has two requests to be made. Firstly, he submits that the area in the occupation of each tenant has not been measured and the area indicated in the area statement dated 29 November 2022 is incorrect. He would therefore request that the Municipal Corporation should measure the area in occupation of each of the occupant before vacation of the premises by them. The second request made by the learned counsel for the appellant is that the tenants be permitted to occupy the premises in their possession till the end of Diwali festival.

4. So far as the first request of the Appellant is concerned, the Municipal Corporation is directed to depute an Officer to carry out measurement of the premises in occupation of the tenants and maintain record thereof. For that purpose, the Officer of the Municipal Corporation shall carry out the exercise of measurement in the first week of November 2023.

4. So far as the second request of the learned counsel for the Appellant is concerned , the Appellants are permitted to occupy the premises in their occupation till 30 November 2023 subject to filing

an Undertaking that the occupation of premises by them would entirely be at their own risk and they alone shall be liable for any mishap or untoward incident taking place at the site. The learned counsel for the Appellant would submit that such Undertakings are already filed before the City Civil Court and the Appellants shall be bound by these Undertakings till they actually vacate the premises.

5. It is clarified that if any third party damage occurs on account of mishap at the building, the Appellants alone would be responsible for the same.

6. Subject to these conditions, the Appellants shall be permitted to occupy the premises upto 30 November 2023. With the above clarifications, the Appeal is disposed of.

7. Till 30 November 2023, the Municipal Corporation shall not disconnect the electricity and water supply to the premises.

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SANDEEP V. MARNE, J.