

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 932 OF 2023
IN
DRAFT NOTICE OF MOTION
IN
B.C.C.C. LONG CAUSE SUIT NO. 2534 OF 2023
ALONGWITH
INTERIM APPLICATION NO. 17258 OF 2023

Yakub Usman Kapadia and anr.

....Appellants

(Orig. Plaintiffs)

V/s.

Mumbai Municipal Corporation and

anr.

....Respondents

Mr. Ashok R. Pande a/w. Mr. Shobhit Shukla, for the Appellants.

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

Ms. Heena P. Shah a/w. Ms. Palak Ranka, for Respondent No.2.

CORAM : SANDEEP V. MARNE, J.

DATED : 10 November 2023.

P.C. :

1. Mr. Pandey, the learned counsel appearing for the

Appellants, on instructions seeks leave to withdraw the Appeal. He however makes two prayers. Firstly, he seeks time of 8 weeks for vacation of the premises by the Appellants. Secondly, he would express apprehension that the demolition of the building would be misused by the Landlord to reduce the area in actual occupation of the Appellants. He would therefore submit that before the actual demolition of the building, an Officer of the Municipal Corporation may measure the area in actual occupation of the Appellants and maintain record thereof.

2. Ms. Shah, the learned counsel appearing for Respondent No.2 would submit that the Municipal Corporation has already disconnected the electricity and water supply in respect of the suit premises and that the condition of the building is such that a mishap is likely to take place at any point of time and in such circumstances, Respondent No.2 cannot be held liable for any untoward incident. This apprehension can be taken care of by directing the Appellants to file usual Undertaking, which the Appellate are willing to file.

3. The Appeal is accordingly **disposed of as withdrawn** with the following directions :

(i) An Officer of the Municipal Corporation shall carry

out measurements of the area actually in occupation of the Appellants within a period of two weeks from today.

(ii) The Appellants shall vacate the suit premises within a period of 8 weeks from today.

(iii) The Appellants shall file an Undertaking before the City Civil Court within two weeks from today. Undertaking to state that occupation of the premises by the Appellants would be at their own risk and that they shall not hold either the Municipal Corporation, Respondent No.2 or any other person responsible for any untoward incident that may occur on account of occupation of the suit premises by the Appellants and that the appellants alone would be responsible for any damage caused to the property or to the lives of the passers by.

4. With disposal of the Appeal, Interim Applications pending therein do not survive. The same also stand disposed of.

**NEETA
SHAILESH
SAWANT**

SANDEEP V. MARNE, J.

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NEETA SHAILESH
SAWANT

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