

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

**Appeal from Order No.1 of 2024
With
Interim Application No.51 of 2024
In
Appeal from Order No.1 of 2024**

Haridas Chitrapoli Nambiar & Ors. ... Appellants.
Vs.
Municipal Corporation for Gr.Mumbai ... Respondents

Mr SK Dubey, Advocate for the appellants.
Ms Smita V. Tondwalkar, Advocate for respondent/MCGM.
**Mr Sagar Karpe, A.E. (B & F Dept.), L Ward, Mr Sachin Sarwade,
S.E. (B & F Dept.), L Ward and Mr Sagar Manjrekar, S.E.
(B P Dept.), L Ward.**

**Coram: R.N.Laddha, J.
Date : 3 January 2024**

P.C.:

This appeal is listed today on account of praeceipe moved by the learned Counsel appearing for appellants on 2 January 2024 for urgent listing on the ground that the respondent/corporation sought to take action of demolition of the suit premises. Accordingly, as per request of learned Counsel appearing for the appellants and in view of the proposed demolition, as per the notice, the appeal is taken up for hearing.

2. Mr SK Dubey, the learned Counsel appearing for the appellants, submits that as the appellants received a notice from the respondent/corporation u/s 353B of the Mumbai Municipal Corporation Act, 1888 (for short, 'MMC Act'). In response, the appellants engaged Structural Auditor and carried out the repairs as suggested. However, on 19.10.2023, the respondent/corporation, issued another notice u/s 351 of the MMC Act. The appellants replied to this notice, but the corporation did not consider it. Instead, on 4.11.2023, the corporation issued an order of demolition, alleging that the appellants had made additions and alterations to the building. The plan of 1996, which was approved but not considered by the respondent/corporation, is also relevant. The learned trial Court refused ad-interim relief without taking into consideration all these aspects.

3. Ms Smita V. Tondvalkar, learned Counsel appearing for the respondent/corporation submits that the appellants did not refer to or annex the 1996 plan in their response to the show cause notice. Additionally, the respondent/corporation is yet to file its reply to the Notice of Motion.

4. The present appeal is filed challenging the order dated 8 December 2023 refusing ad-interim relief to the appellants/

plaintiffs in Notice of Motion No.104917 of 2023 in Long Cause Suit No.2851 of 2023. Considering the nature of the dispute involved in the present appeal, instead of determining the correctness of the impugned order it would be appropriate that the City Civil Court considered and decided the Notice of Motion No.104917 of 2023 in Long Cause Suit No.2851 of 2023 finally.

5. The learned Counsel for respondent/corporation states that the corporation will file an affidavit-in-reply to the Notice of Motion within two weeks from today, in the trial Court. The appellants/plaintiffs shall file a rejoinder, if any, within one week thereafter with an advance copy to be served on the other side. The trial Court is requested to expedite the hearing of the Notice of Motion and decide it preferably within two weeks thereafter. Until the Notice of Motion is disposed of, the parties shall maintain the *status-quo*.

6. In view of this, the instant Appeal stands disposed of accordingly. The pending application(s) also stand disposed of. Needless to state that this Court has not examined the merits of the case and all contentions of the parties are left open.

[R.N. Laddha, J.]