

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11409 OF 2024

Nilesh Nenshi Gala

....Petitioner

V/s.

Mahek Kiran Lund and Anr.

....Respondents

Mr. Surel Shah a/w *Mr. Ankit Lohia, Mr. Shanay Shah, Mr. Arun P. i/b Sahil Sayeed, for the Petitioner.*

Mr. S. R. Ketkar, *for the Respondent No.2.*

CORAM : SANDEEP V. MARNE, J.

Date : 14 AUGUST 2024.

P.C. :

1) After hearing Mr. Shah the learned senior advocate appearing for the Petitioner, I do not find any reason to interfere with the order dated 29 July 2024 which directs Petitioner – Plaintiff to carry out the repairs and in the event of Plaintiff / Petitioner failing to commence the repair work within one month, Defendants are permitted to carry out repairs. However, at the same time, the concern expressed by Mr. Shah that the Defendants are deliberately delaying in decision of the suit cannot be lost sight of. It appears that the examination of PW-1 is completed on 31 July 2023. Mr. Shah would submit that though PW-2, who is an official of the Municipal Corporation is repeatedly summoned, the Defendants are deliberately avoiding to conduct cross-examination of PW-2 with a view delay decision of the suit. It appears that summons was issued by the Court to the said official of the Municipal Corporation by order dated 22

August 2023. Mr. Shah would submit that till date cross-examination of the said witness is incomplete.

2) In that view of the matter, it is clarified that mere grant of permission for carrying out tenantable repairs would not stand in the way of expeditious disposal of the suit. The Small Causes Court shall not adjourn the suit only on the ground of grant of permission for carrying out repairs in pursuance of order dated 29 July 2024. Even if the repairs remain incomplete, and the suit becomes ripe for disposal, the Small Causes Court shall proceed to decide and dispose of the same without waiting for completion of repairs of the suit premises. Needless to clarify that if permission of the Municipal Corporation is required for effecting any repairs, the Defendant shall not carry out the repairs without seeking permission of the Municipal Corporation. The Defendant shall also not claim any equities on account of carrying out any repairs in the suit premises.

3) With the above clarification, the Writ Petition is disposed of.

[SANDEEP V. MARNE, J.]

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