

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 13863 OF 2024  
IN  
APPEAL FROM ORDER NO. 721 OF 2024

Jaimin Shailesh Shroff ...Applicant/ Appellant  
Versus  
Sukesh Arvind Shastri And Others ...Respondents

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Mr. Manoj Kumar Upadhyay, for Applicant/Appellant.  
Ms. Sumandevi Yadav, for Respondent Nos. 1 to 7.  
Mr. Santosh Parad for Respondent No.8/MCGM.  
Mr. S. Bangar a/w. B.K. Gala, for Respondent No.9.

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**CORAM : M.M. SATHAYE, J.**

**DATE : 27<sup>th</sup> NOVEMBER, 2024**

**P.C. :**

1. At the outset, it is clarified that appearance shown for Respondent No. 3 in yesterday's order dated 26.11.2024 be treated as appearance for Respondent No.9.

2. Heard learned counsel for the Appellant and learned counsel for Respondent Nos.1 to 7 who collectively represent the tenants in the suit structure - Satyabhama Niwas (building Nos.1 & 2). Also heard learned counsel for Respondent No. 9, who categorically states that Respondent No.9 is 80% owner of the subject matter land along with structure thereon. Heard learned counsel for Respondent No.8-Municipal Corporation.

3. This appeal is filed challenging the order dated 01.10.2024 passed by Ad-hoc Judge, City Civil Court, Borivali Division, Dindoshi, Mumbai in Notice of Motion No. 2986 of 2024 in L.C. Suit No. 1329 of 2023. By the said impugned order, ad-interim relief is refused. Motion is pending for hearing.

4. By the said motion, the Appellant and Respondent Nos. 1 to 7 (Plaintiffs) are praying to restrain the Respondent-Corporation from implementing notice dated 26.08.2024 and to restrain it from disconnecting water and electricity supply to the suit structure.

5. It is already recorded in the order passed by this Court yesterday that the Respondent-Municipal Corporation had already disconnected the electricity and water supply before the matter was heard. However, pursuant to said order, today morning, the measurement of the areas in possession of respective Plaintiffs has been carried out in joint measurement between the Plaintiffs / tenants as well as Respondent No.9. The measurement report is yet to be issued.

6. Learned counsel for the parties have placed on record certain photographs of the suit property including those taken during the measurement.

7. Learned counsel for Respondent No.9, on a query by the Court about the execution of PAAA agreement or any other agreement, submitted that since Respondent No. 9 is only 80% owner of the subject matter land and structure, it is not in a position to make positive statement about execution of PAAA and also because its

dispute with the owner of remaining 20% share in the subject matter land and structure is pending in another litigation.

8. Learned counsel for the Appellant submits that there are documents on record including correspondence entered by Respondent No.9 with the tenants/Plaintiffs claiming to be owner of the subject matter property and asserting that in case of any problem in future about 20% share in the subject matter property, the responsibility of remaining 20% share holder is upon Respondent No.9. It is noted that a letter relied upon by the Plaintiffs is of 06.04.2022. In essence, what is submitted by the Plaintiffs is that on the representation of Respondent No. 9, rents have been tendered to Respondent No.9.

9. Learned counsel for Respondent No.9 has fairly suggested that in the given circumstances of the case, Respondent No.9 is ready if the owner of remaining 20% share in subject matter property is impleaded in the present appeal from order as well as the suit and is called upon to appear before the Court. He however, further submitted that the financial and other viability of the development will have to be considered independently but occupation of the Plaintiffs can not continue in perpetuity, considering the condition of the suit structure and earlier record of the dispute.

10. Perusal of the plaint shows that the Plaintiffs have prayed for safeguarding the rights of the Plaintiffs by directing Defendant Nos. 2 & 3 (present Respondent Nos.9 & 10) to execute necessary documents such as agreement for permanent /temporary alternate

accommodation before suit structure is pulled down. Perusal of the plaint would show that the Plaintiffs have made Respondent No. 9 as well as Municipal Corporation parties. However, as submitted by their advocate, for lack of detail knowledge, the owner of the 20% share in the subject matter property is not made party. He however, submits that Plaintiffs are ready to join the said party in the suit and in this appeal from order.

11. It is noted that the report of the area measurement is yet not on record and will be required to be verified by both the sides before the matter can be considered further.

12. Learned counsel for Respondent No. 9 is directed to supply the address of Ms. Nayna Jaykar who is stated to be 20% owner in the subject matter property. Upon such supply of details, the Appellant and Respondent Nos. 1 to 7 (Plaintiffs - tenants) undertake to make her party in the subject matter suit as well as in the present Appeal from Order. Necessary amendment to be carried out in this appeal on or before 29.11.2024. After amendment is carried out, **issue notice to the added Respondent**, returnable on **10.12.2024**. In addition to Court notice, private notice is permitted.

13. Considering that the measurement has already taken place and the 80% owner of the subject matter property has shown willingness to explore the possibility of redevelopment in the presence of owner of remaining 20% subject matter property in this Court, the Appellant and Respondent Nos. 1 to 7 i.e. Plaintiffs / Tenants cannot be expected to live without electricity and water supply. However,

considering the record, especially order dated 20.06.2024 passed by this Court, as also the fact that there were conflicting structural audit reports and TAC Committee has opined that the suit structure is of C-1 category, the Appellant and Respondent Nos. 1 to 7 (Plaintiffs / Tenants) are directed to file written undertaking in this Court on or before 29.11.2024 stating that they will occupy the suit structure at their own risk and the owner or Municipal Corporation will not be held responsible in case of any mishap.

14. Upon filing such undertaking by the Plaintiffs, the Respondent Municipal Corporation shall reconnect the water and electricity supply to the suit structure.

15. Stand over to **10.12.2024 at 2.30 pm**, for further consideration.

16. All concerned to act on duly authenticated or digitally signed copy of this order.

**(M.M. SATHAYE, J.)**