

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**INTERIM APPLICATION NO.38 OF 2024
IN
SUIT NO.4913 OF 2000**

**Nariman Building Co-operative
Housing Society Ltd.**

....Plaintiff

V/S

Ramesh Madhukar Apte & Ors.

....Defendants

Mr. Karl Tamboly with Mr. Malcolm Siganporia, Ms. Nandini Joshi, Mr. Dhruv Joshi and Ms. Preeti Agarwal i/b M/s. Harish Joshi & Co. for *the Applicant*.

Ms. Armin Wandrewala i/b Ms. Kanchan Pandare for *Respondent No.10*.

Mr. Kirit Munshi with Mr. Z.A. Jariwala and Mr. Ganesh Ambekar i/b M/s. Thakore Jariwala & Associates for *Plaintiff*.

Mr. Kuber Wagle with Ms. Ruddhi Bhalekar i/b M/s. ANM Global for *Defendant Nos.1(a), 1(b), 2 and 3 in Suit No.4913 of 2000*.

Mr. Kunal Dwarkadas with Mr. Nikhil Apte and Mr. Neil Dutta i/b M/s. Wadia Ghandy & Co. for *Defendant No.4(b)(i) to (iv) in S. 4913 of 2000*.

Mr. Bimal Bhabhda for *Applicant in IA 2541 of 2020*.

Ms. Charushila Vaidya, 2nd Asstt. to Court Receiver with Mr. Samir Alekar, Section Officer present in Court.

CORAM: SANDEEP V. MARNE, J.

DATE : 03 MAY 2024.

P.C.:

1 This Interim Application is filed seeking the following prayers:

- "(a) this Hon'ble Court be pleased to Order and Direct Orig. Respondent No.10 to grant the Society, the appointed Contractor, Structural Consultant and Architect unhindered access to Flat 12A by opening Flat 12A and keeping it open each and every day from 9.30 am to 9 pm, till the court ordered repairs are completed or on such other terms and conditions as this Hon'ble Court may deem fit.
- (b) *In the alternative to (a)*, this Hon'ble Court be pleased to Order and Direct the Ld. Court Receiver Hon'ble Bombay High Court (Orig. Respondent No.11), with the assistance Police, to open Flat 12A and keep it open each and every day from 9.30am to 9pm till the court ordered repairs are completed, to enable the Society / appointed Contractor /Structural Consultant/Architect to get unhindered access to Flat 12A as per the said Orders to carry out the court ordered repairs, or on such other terms and conditions as this Hon'ble Court may deem fit.
- (c) that this Hon'ble Court be pleased to pass necessary Orders and issue directions for extension of time for completing the court ordered repairs as per the said Orders, including this Hon'ble Court's 2023 Order, by a period of 12 weeks from date of commencement of continuous unhindered access to Flat 12A, or any other time period as this Hon'ble Court deems fit.
- (d) this Hon'ble Court be pleased to pass necessary orders directing the civil imprisonment of Orig. Respondent No.10 / her purported representative / purported constituted attorney for a period of 3 (three) months or such other period as this Hon'ble Court may deem fit in the facts and circumstances of the present case.
- (e) Ad-interim reliefs in terms of (a) to (d) above;
- (f) for costs of the Interim Application;

- (g) for such other and further reliefs as the nature and circumstances of the case may require and
- (h) such other further directions as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

2 After Mr. Tamboly took me through various orders previously passed by this Court under which Respondent No.10 not just agreed but was also directed to give unhindered access to Flat No.12A to the contractors/ structural consultant appointed by Respondent No.9 for carrying out the repair works, Ms. Wandrewala, the learned counsel appearing for Respondent No.10 fairly submits that Respondent No.10 shall provide unhindered access to Flat No.12A during the period from 6 May 2024 to 15 July 2024 to the contractors and structural consultant appointed by Respondent No.9 for carrying out repair works during that period. Ms. Wandrewala however expresses an apprehension about the quality of the work that would be carried out by contractor of Respondent No.9 and she submits that the work which Respondent No.9 is carrying out through its contractor is not upto the mark. I am afraid this Court will not be in a position to go into the said apprehension expressed by Ms. Wandrewala. This Court, in its order dated 29 March 2023 has already recorded a statement made on behalf of Respondent No.9 that all the work as contemplated under Proforma-B of the Structural Auditor's Report of M/s. Shashank Mehendale & Associates (Structural Consultant) dated April 2021, shall be carried out by the Applicant-Society. Ms. Wandrewala would submit that M/s. Shashank Mehendale & Associates is not actually carrying out the work but the same is carried out by the some

other agencies. M/s. Shashank Mehendale & Associates are merely Structural Consultants/Auditors who have merely suggested the works which are required to be carried out by the Applicant-Society. The actual execution of the work is bound to be done by some contractor.

3 Ms. Wandrewala expresses an apprehension that the Applicant-Society is carrying out the repair works without obtaining necessary permissions from the Municipal Corporation. My attention is invited to the permission granted by MCGM on 28 April 2023 under the provisions of section 342 of the Mumbai Municipal Corporations Act, 1888. The repair work thus appears to be carried out in accordance with permission granted by MCGM. In that view of the matter the apprehension expressed by Ms. Wandrewala would not survive.

4 In view of fair statement made by Ms. Wandrewala for providing unhindered access to Flat No.12A during period from 6 May 2024 to 15 July 2024 I am of the view that nothing further remains to be adjudicated in the present Interim Application. The Interim Application is accordingly **disposed of**.

(SANDEEP V. MARNE, J.)