

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

**INTERIM APPLICATION (L) NO.20317 OF 2022
IN
SUIT NO.153 OF 2024**

Harina Nailinkant Shah and Others ...Plaintiffs
vs.
Asit Dhankumar Jhaveri and Others ...Defendants

Mr. Bhavik Manek a/w. Mr. Ashwin Shete, Mr. Rohit Jain, Ms. Avni Vasani i/b. Jayakar and Partners, for the Plaintiffs
Mr. Simil Purohit a/w. Mr. Bapat, Ms. Neha Sule, Mr. Bhushan Mahadik and Ms. Pallavi P. i/b. Mahadik and Associates, for Defendant Nos. 1 to 3.

CORAM : N. J. JAMADAR, J.
DATE : JULY 15, 2024

P.C.:

1. Heard the learned counsel for the parties.
2. This suit is instituted, inter alia, for a declaration that the plaintiffs and defendant Nos. 1 to 3 are the co-owners of the suit property known as 'Ratnakar Palace Building' including the suit structure and other structures and the subject residential premises and for consequential reliefs in relation thereto including a decree for equitable partition of the suit properties by metes and bounds between the plaintiffs, on the one part, and defendant Nos. 1 to 3, on the other part, claiming that each party is entitled to 50 % share in the suit properties.
3. In the said suit, the plaintiffs/ applicants filed interim

application seeking, inter alia, reliefs of appointment of Court Receiver and to restrain the defendants/respondent Nos. 1 to 3 in any manner directly or indirectly, disposing of and/or assigning and/or encumbering and/or in any manner alienating, and/or granting on lease/leave and license basis to any person and/or occupying any portion/area of the first floor flat of the subject residential premises and the garage.

4. It is the case of the plaintiffs/applicants that when the application was listed before the Court on 18th July, 2022, a statement was made before the Court on behalf of defendant/respondent Nos. 1 to 3 that they would maintain status quo with regard to the first floor admeasuring 1860 sq.ft. more particularly described in Exhibit C to the plaint. A communication to that effect was addressed by the advocate for the plaintiff on 19th July, 2022.

5. The applicants averred, in breach of the said undertaking given before the Court, respondent Nos. 1 to 3 have started extensive structural alterations, erection of permanent structure and other repairs in the said first floor flat. Copies of the photographs depicting the nature of the work, and a notice addressed by the Municipal Corporation to respondents/defendants under section 354A of the Mumbai Municipal Corporation Act, 1888 are annexed to the additional affidavit filed on behalf of the

plaintiffs.

6. Mr. Bhavik Manek, learned counsel for the plaintiffs thus prayed for an ad-interim injunction till the application is decided after hearing the parties.

7. Mr. Simil Purohit, learned counsel for the defendants/respondents, countered the submissions on behalf of the applicant. It was urged that the plaintiffs are not entitled to the share they claim in the suit property. The repairs which are being carried out by the defendants are tenantable repairs, for which prior permission of the Planning Authority is not required. The learned counsel submitted that the defendants would file an appropriate affidavit in reply to deal with the contentions in the additional affidavit.

8. I have considered the averments in the application, especially the additional affidavit in support thereof, and the submissions canvassed by the counsel for the parties.

9. From the perusal of the correspondence exchanged by and between the advocates for the parties, especially the letter dated 19th July, 2022 addressed on behalf of the advocates for the defendants, it becomes evident that it was confirmed on behalf of the defendants that on 18th July, 2022 at 10.30 am, a statement was made by the advocate for the defendants that they would maintain

the status-quo as of 18th July, 2022. Mr. Purohit attempted to wriggle out of the situation by asserting that the suit was subsequently dismissed and it cannot be said that upon restoration of the suit, the said statement continued.

10. I find it rather difficult to agree with this submission. There does not appear any controversy about the fact that a statement was made on behalf of the defendant that the defendant would maintain the status-quo as of 18th July, 2022. From the perusal of the material on record, it becomes prima facie evident that the defendants are carrying out extensive work in the first floor flat, Ratnakar Palace building. Prima facie, it appears that the said work is without prior permission of the Municipal Corporation as is evident from the notice dated 3rd July, 2024.

11. In these circumstances, till the application is heard after providing an opportunity to the defendants/respondents to file affidavit in reply, it is necessary to direct the defendants to maintain the status-quo in respect of the property described at Exhibit C to the plaint.

Hence, the following order.

ORDER

1] The defendants/respondents shall maintain status-quo in

respect of the property described at Exhibit C to the Plaint till 23rd July, 2024.

2] The defendants are at liberty to file an affidavit in reply to deal with the application as well as the contentions in the additional affidavit filed on behalf of the plaintiffs on or before 22nd July, 2024 and serve its copy on the applicants/plaintiffs. Stand over to 23rd July, 2024.

(N. J. JAMADAR, J.)