

rrpillai

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 153 OF 2025
WITH
APPEAL FROM ORDER NO. 154 OF 2025
AND
APPEAL FROM ORDER NO. 151 OF 2025**

Vilas Waikar and Others ... Appellants

Vs.

Maharashtra Housing and Area ... Respondents
Development Authority and Others

Mr. Kevin Gala a/w. Ms. Archana Jha and Ms. Sayali

Ramugade i/b. Mr. Naazish Shah for the Appellants.

Mr. Satyajeet P. Dighe for Respondent No. 1 (MHADA).

Mr. Saurabh Pakale (through VC) a/w. Mr. Nilesh Desai for
Respondent No.2.

Mr. Om Suryavanshi i/b. Ms. Komal Punjabi for BMC.

CORAM : GAURI GODSE, J.

DATE : 18th JUNE 2025

ORDER :

1. Notice for final disposal is already issued. The contesting respondent is only the corporation. These appeals are taken up for final disposal.

2. These appeals are preferred to challenge the order passed by the City Civil Court rejecting the prayer for

restoration of three notice of motion filed by the plaintiffs. In all the three notice of motion the prayers are only against the corporation. Hence, it is not necessary to hear the remaining respondents for deciding the grievance in these appeals.

3. Learned counsel for the appellants submits that on 4th December 2024 when all the three notice of motions were listed for hearing, an application was made for adjournment on the ground of medical emergency on the part of the Advocate for the plaintiffs. However, the prayer for adjournment was refused and the notice of motions were rejected without hearing.

4. Learned counsel for the appellants submits that on the same date the learned Advocate for the plaintiffs prayed for restoring the notice of motion by giving opportunity of hearing to the plaintiffs. However, the learned Judge refused to restore the notice of motions. He therefore requests that all the three notice of motion be restored for hearing on merits.

5. Learned counsel for the corporation submits that the suit is of the year 2007 and the same is at the stage of recording evidence. He submits that the notice of motions are also pending since 2018. No efforts have been made to

argue the notice of motions. He thus submits that the learned Judge of the City Civil Court has rightly refused to restore the notice of motions.

6. I have perused the papers of the appeal. Learned Judge has refused the adjournment application on the ground that the suit is a targeted case as it is filed in 2007. Learned Judge has observed that the plaintiffs ought to have made an alternate arrangement if the Advocate for the plaintiffs was in some medical emergency.

7. In the notice of motion the plaintiffs have made a grievance against the corporation and its officers alleging recording of false evidence and unauthorised demolition. Though the suits are pending since 2007, I see no impediment in hearing and deciding the notice of motion on merits. Learned counsel for the corporation submitted that unnecessary adjournments are sought by the plaintiffs with an intention to keep the motions pending. In view of these grievances made by the learned counsel for the corporation, learned counsel for the plaintiffs submits that they would not seek any further adjournment and shall argue the notice of motions on the next date.

8. He further submits that the next date in the suit is tomorrow, 19th June 2025. He further assures that the plaintiffs shall not seek any adjournment and shall argue the notice of motion on the next date before the trial court or on the date fixed by the trial court.

9. The copy of the roznama produced on record shows that on the same date learned Advocate for the plaintiffs had prayed for restoration of the notice of motions and requested an opportunity to argue the motions. It appears that since the Advocate for the corporation was not present when the request was made, the learned Judge refused to restore the notice of motions.

10. It appears that the Advocate for the plaintiffs had tendered a written application dated 4th December 2024 praying for restoration of the notice of motions. Considering that the request for restoration was made on the same day, I do not see any reason for not permitting the plaintiffs to argue the notice of motion on merits. Hence, the appeals are allowed by passing the following order :

- (i) The application dated 4th December 2024 filed by the plaintiffs Advocate for restoration of the notice of

motion is allowed.

(ii) Order dated 4th December 2024 rejecting the Notice of Motion No. 436 of 2018, Notice of Motion No. 437 of 2018 and Notice of Motion No. 4717 of 2018 are quashed and set aside.

(iii) Notice of Motion No. 436 of 2018, Notice of Motion No. 437 of 2018 and Notice of Motion No. 4717 of 2018 are restored to the file, subject to the plaintiffs arguing the notice of motion on the next date or on the date fixed by the learned Judge of the City Civil Court.

(iv) It is clarified that if the notice of motions are not argued on the next date or on the date fixed by the learned trial Judge, it would be open for the learned trial Judge to pass appropriate orders.

(v) Since the next date in the trial court is 19th June 2025, the learned Advocate for the parties are at liberty to intimate this order to the learned trial Judge for hearing the notice of motions tomorrow or on the date fixed by the trial court as per the convenience of the trial court.

(vi) Appeals are allowed in the aforesaid terms.

(vii) In view of disposal of the appeals, pending applications, if any, are disposed of as infructuous.

[GAURI GODSE, J.]