

Arjun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.7766 OF 2025

IN

WRIT PETITION NO.470 OF 2020

Anand Jayant Vashi & Ors.

...Applicants

IN THE MATTER BETWEEN:

1. Purnima Ashok Shah (since deceased)

...Petitioners

2. Seema Ashok Shah

Versus

Anand Jayant Vashi & Ors.

...Respondents

Mr. Shiraz Rustomjee, Senior Advocate a/w Yash Momaya, Kushan K. Kode i/b Vashi & Vashi, for the Applicants in IA/7766/2025.

Mr. Kunal Bhanage a/w Akshay Pawar & Priyanka Acharrya, for the Petitioners in WP/470/2020.

CORAM: MADHAV J. JAMDAR, J.

DATED: 08 MAY 2025

P.C.:

1. The Interim Application has been filed by the Applicant i.e. original Respondents seeking the following reliefs :-

“a. That this Hon’ble Court pass appropriate orders and directions permitting the Applicants/BISA to immediately take all steps to commence repairs of the Suit Premises as directed in the Report, annexed hereto as Exhibit A.;

b. That this Hon’ble Court pass appropriate orders and directions directing the Respondent No. 1 to temporarily vacate the Suit Premises during the time structural repairs

can be carried out in terms of the Report and to take up temporary occupation in the alternate accommodation provided by the Applicants/BISA;

- c. That alternatively, this Hon'ble Court pass appropriate orders and directions, directing the Respondent No. 1 to temporarily vacate the Suit Premises during the time structural repairs can be carried out in terms of the Report and obtain for herself temporary alternate accommodation for which an appropriate amount, as deemed fit by this Hon'ble Court will be paid as compensation on monthly basis, by the Applicants/ BISA to Respondent No. 1 hereto;*
- d. In the event, Respondent No.1 fails to vacate the Suit Premises, this Hon'ble Court be pleased to appoint the Court Receiver, High Court Bombay or such other person as this Hon'ble Court deem fit as receiver in respect of Suit Premises with all powers under Order XL including to cause Respondent No. 1 to be temporarily vacated the Suit Premise for the purposes of carrying out Repair work, with police assistance if required and/or on such terms as deemed appropriate by this Hon'ble Court."*

2. Mr. Shiraz Rustomjee, learned Senior Counsel tenders the relevant dates and events. The same read as under :-

<i>Sr. No.</i>	<i>Date</i>	<i>Particulars</i>
<i>1.</i>	<i>November 26, 2018</i>	<i>An application was filed by Bombay Internation School Association ("BISA") in RAE Suit No. 1481 of 2017 seeking a direction to original Petitioners to permit BISA and/or its representative and/or authorised person to enter the Suit Premises to carry out the requisite structural repairs and for such further orders and reliefs as may be required.</i>
<i>2.</i>	<i>October 24, 2019</i>	<u>Exh. 12 Order</u> <i>The above application was allowed, in terms of following:</i>

		a. the original Petitioners were directed to permit BISA to enter upon the Suit Premises. b. BISA was directed to provide suitable alternate accommodation to the original Petitioner as per their choice till completion of tenable repairs.
3.	December 10, 2019	<u>The Appellate Order</u> The original Petitioners impugned the Exh. 12 Order before the Ld. Appellate Bench of the Court of Small Causes at Mumbai in Misc. Appeal No. 402 of 2019, which Appeal was partly allowed and modified the Exh. 12 Order in following terms: a. Original Petitioners are directed to permit the BISA and/or other persons authorised by them to enter upon the Suit Premises and carry out structural repairs. b. BISA are directed to provide suitable alternate accommodation to the original Petitioners, if they request so to the BISA, during the period of the repairing of Suit Premises.
4.	January 3, 2020	Writ Petition No. 470 of 2020 (“WP”) was filed impugning Exh. 12 Order and Appellate Order.
5.	February 21, 2024	The WP was disposed off by this Hon’ble Court by appointing Nandkarni & Co. as the Architect in order to ascertain the amount of work required in the Suit Premises. <u>Note:</u> Liberty to mention the matter was granted under this Order to seek appropriate clarification.
6.	February 29, 2024	The WP was moved and by consent, parties appointed Parelkar & Dallas as

		<i>the Architect and further in was clarified that structural repair work by Pradeep Gajaria (MHADA Certified Engineer).</i>
<i>7.</i>	<i>June 28, 2024</i>	<i>M/s. Parelkar & Dallas communicated their inability to accept the assignment and accordingly, the WP was mentioned again and this Hon'ble Court was pleased to appoint Shetgiri and Associates instead.</i>
<i>8.</i>	<i>November 8, 2024</i>	<i>Inspection of Suit Premises was scheduled and conducted.</i>
<i>9.</i>	<i>April 2, 2025</i>	<i>The Report was made available to Ld. Advocates through Email. The findings of Report are as under:</i> <i>a. Critical elements of the Suit Premises and structure in general will have to be re-cast, structurally repaired and restored.</i> <i>b. Observations mentioned require urgent attention, as any further delay could lead to a part or complete failure thus making structural elements within the Suit premises vulnerable to mishap without warning signals.</i> <i>c. The Suit Premises would be categorized as C-2A i.e. deteriorated and distressed with need of immediate structural repairs, and if left untreated, would deteriorate and transform into a C-1 category premises.</i> <i>d. The Suit Premises is repairable, however under C-2A category the required works can only be carried out after vacation of the Suit</i>

		<i>Premises; and subsequently carrying out repairs to the extremely distressed elements; and complete and major restoration of the vacant Suit Premises.</i>
10.	April 8, 2025	<i>The Respondent was called upon to temporarily vacate the Suit Premises on an urgent basis, to enable BISA to commence the repair works, that were urgently required to be done.</i>
11.	April 17, 2025	<i>The present IA was filed.</i>
12.	April 19, 2025	<i>The civil engineers visited the Suit Premises to ascertain the nature of work and further to identify major repairs, as required to be carried out in Suit Premises.</i>
13.	April 28, 2025	<i>The Respondent was showed a 2BHK Flat, in building named Evergreen, located on Babulnath Road itself.</i>
14.	April 30, 2025	<i>The Respondent through her Advocates communicated that Respondent wants to see more Flats, in the vicinity.</i>

3. Perusal of the record shows that this Court by Order dated 21st February 2024 read with Order dated 28th June 2024 appointed M/s. Shetgiri & Associates to carry out inspection. Accordingly, Mr. Amol P. Shetgiri for M/s. Shetgiri & Associates and Mr. Rakesh R. Karnik, Associates Consultant, Bhoomi Consultants have carried out the inspection and submitted a Report dated 2nd April 2025. The said Report records following observations :-

“OBSERVATIONS:-

1. *Almost all of the vertical wooden posts are observed to have decayed at multiple levels with de-bonding and separation cracks with the adjoining element of different / varying nature. The wooden joists, rafters and planks show damages at various locations indicating the ageing and distinct signs of end of the economic life.*
2. *Wooden sections especially within the supporting passage and other habitable areas were found to be highly decayed and damaged with major cracks, at many locations.*
3. *Steel sections of floor beams and columns were found to be heavily corroded at many locations. Additional steel sections (steel beams) were installed to support the floor as a local support.*
4. *It was observed that wooden joists have been removed within the bedroom and on account of which the span between the two end supporting beams has increased considerably. Although local supporting beam in steel section has been provided, the resultant after-effects of vibrations and sagging are unavoidable.*
5. *Load Bearing brick walls were observed with cracks including leakage and seepage elements at many locations. The bricks of the masonry walls are seen to have eroded at select few locations with loosened and depleted joint mortar. The impact of deteriorated walls is directly concerned with its load bearing capacity.*
6. *Separation cracks were observed between Steel sections, load bearing brick walls and wooden sections, at many locations.*
7. *Leakages including peeling of paint were observed through load bearing walls at multiple locations. Algae growth were also observed on the said load bearing walls at few locations.*
8. *Improper and local supports in steel sections were observed to be provided as per need to support the deteriorated structural elements at many locations. Due to such improper local supports major cracks were observed to have developed at the said particular location in the load bearing walls, beneath the support.*

It may cause the partial or entire failure of the structure.

9. *In one of the habitable room the staircase in wooden/steel section is observed installed on the floor for vertical access of upper floor. The structural elements of the said staircase were observed deteriorated.*
10. *Undulation and settlement of the floor slab within the passage area on the external end is observed. This is due to replacement of wooden column sections and replacement with steel sections, however without much of a scientific approach followed while doing so.*
11. *There were severe vibrations felt from the Premises on the 4th floor with the usage of the said area being an assembly area or mini-auditorium as informed to us. Severe vibrations have led to cracking of walls and as such affecting the structural framing system and in other words, the overall stability of the system.*
12. *External and internal plastering requires complete redoing as is observed to be in a deteriorated state.*

*The overall condition of the said Flat is observed to be deteriorated and not upto the satisfactory level. It can be inferred that the maintenance of the Flat during its economic life seems to be very poor. The same seems not adequate enough to arrest the damage & deterioration. The overall structural elements of the Flat has outlived its economic life and the overall condition of the structural elements in the present state is certainly "Not satisfactory". In our opinion, the said structural elements and the overall status of the flat is in dilapidated condition. **It should be vacated, structurally repaired, restored and structural and non-structural retrofitting works carried out to make it habitable, safe and sound.***

As mentioned the above said premises Flat is Repairable, however under C-2A i.e. works to be executed only after vacating the Flat and carrying out demolition of extremely distressed elements & carrying out complete and major restoration of the flat.

Further postponement of the Repairs & Restoration works after vacating the tenants could certainly prove fatal and disastrous. This shall be extremely important & needs

attention at the earliest especially considering the risk posed to life and property anytime now or in future.

The structural elements within the said Flat is in a critical condition and any mishap or partial/full collapse of the said structural elements may happen without giving any signal. This may cause damage to human life of tenants residing in it and the movements within the other areas of the building including school &/or passer bye's. Hence it should be vacated and works undertaken immediately and on priority basis under the supervision of a Structural Consultant."

(Emphasis added)

4. Thus, it is very clear that urgent repairs are necessary to the suit premises where the Original Petitioner No.2 - Seema Ashok Shah resides. The above report of structural Engineer *inter alia* records that if repairs are not carried out as the suit premises are in critical condition there is possibility of partial/full collapse and there is danger to human life. It is required to be noted that there is a school in the suit building. Thus, there is danger to the life of school children.

5. Thus, in the facts and circumstances of this case, the Interim Application is disposed of by passing the following order:

ORDER

i. The Original Petitioner No.2 - Seema Ashok Shah is directed to temporarily vacate the premises on the third floor of Gilbert Building which is in her occupation within a period of two weeks from today, so as to enable the Applicants i.e. Original Respondents to carry out

structural repairs to the premises as indicated in the Report dated 2nd April 2025, of M/s. Shetgiri & Associates. The Applicants shall carry out structural repairs at their own costs.

ii. The repairs shall be carried out within a maximum period of six mix months from the date of the Original Petitioner No.2 - Seema Ashok Shah vacating the suit premises, the Court Receiver, High Court Bombay shall stand automatically appointed to take custody of the suit premises from the Applicants and handover the same to the Original Petitioner No.2 - Seema Ashok Shah.

iii. In the event the Original Petitioner No.2 - Seema Ashok Shah does not vacate the premises as set out above, within a period of two weeks from date of present Order, then the Court Receiver, High Court Bombay, stands automatically appointed, without any further reference to this Court, and the Court Receiver shall forthwith, without delay, take physical possession of the suit premises on the third floor, Gilbert building, which is in the occupation of the Original Petitioner No.2 - Seema Ashok Shah by vacating / removing the Original Petitioner No.2 - Seema Ashok Shah for the aforesaid

duration of six months, including with police protection if required, from the local police station. The Court Receiver shall thereafter forthwith handover possession of the premises to the Applicants for the aforesaid period of six month to carry out structural repairs referred to herein above. It is made clear that the appointment of the Court Receiver, is for the limited purpose of facilitating the above handover. After the completion of the repairs the Court Receiver shall immediately put said Seema Shah in possession of the suit premises.

iv. The cost charges and expenses of the Court Receiver, if require to be appointed will be borne by the Applicant.

v. The Applicants shall instruct their contractors to take suitable measures to cover the belongings of the Respondent while undertaking the structural repairs.

vi. For the duration of the aforesaid period of six months, and until the completed flat is offered back to Ms. Seema Shah for her occupation, the Applicants are directed to pay to the Original Petitioner No.2 - Seema Ashok Shah a sum of Rs. 1,00,000/- per month, on or before the first of each month, to enable her to obtain

temporary alternate accommodation of her choosing.

vii. It is made clear that neither side shall claim any equities on the basis of the present order, and the same is being passed purely in the light of the Report of M/s. Shetgiri & Associates and having regard to the urgent need to carry out structural repairs.

6. The Interim Application is disposed of in above terms, with no order as to costs.

7. Liberty to apply in the event of any difficulty in giving effect to the above terms.

[MADHAV J. JAMDAR, J.]