

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.914 OF 2026**

M/s. Shah Surfaces LLP ... Petitioner
versus
The Municipal Corporation of Gr. Mumbai and Anr. ... Respondents

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Mr. Aseem Naphade with Mrs. Leena Shah i/by M/s. Shah and Furia Associates, for Petitioner.

Mr. Santosh Mali, for Respondent No.1.

Mr. Mayur Khandeparkar with Ms. Aneesa Cheema, Mr. Kartik Joshi i/by Wadia Ghandy and Co., for Respondent No.2.

CORAM: N.J.JAMADAR, J.

DATE : 7 MARCH 2026

P.C.

1. Heard the learned Counsel for the parties.
2. By this Petition under Article 227 of the Constitution of India, the Petitioner – Plaintiff in L.C.Suit No.666 of 2025 takes exception to the order passed by the learned Judge, City Civil Court, in Chamber Summons No.1356 of 2025, whereby the prayer of the Petitioner to amend the plaint so as to place on record the Structural Audit Report dated 24 June 2025 prepared by S.P.College of Engineering, certifying the structure in question as the repairable structure, falling in category C2-B, came to be rejected.
3. The Petitioner – Plaintiff is the owner occupier of the commercial premises admeasuring 14654 sq. ft. situated on the ground floor, bearing Unit No.1 in the building comprising of ground plus first upper floor, known as

'Laxmi Commercial Complex', situated at Magathane, Borivali (E), Mumbai. Respondent No.2 is in the occupation of the first floor of the said premises. Respondent No.1 Corporation issued a notice under Section 353B of the Mumbai Municipal Corporation Act, 1888, calling upon the owner/occupier to carry out the structural audit. Respondent No.2 submitted the structural audit report by M/s. Space Designs and Developments, categorizing the building as C-1 (to be evacuated and demolished immediately). In contrast, the Petitioner got an independent structural audit report from M/s. Madhu N. Mishra, categorizing the building as C2-B (no eviction, major structural repairs only).

4. Apprehending the action on the basis of the adverse C-1 report, without due process of law, the Petitioner instituted L.C.Suit No.666 of 2025 seeking declaratory and injunctive reliefs. By an order dated 24 March 2025, the trial Court referred the matter to the Technical Advisory Committee (TAC). Vide report dated 27 May 2025, TAC classified the building as C-1. Thereupon, Respondent No.1 issued a notice on 9 June 2025 under Section 354 of the Act, 1888, directing the demolition of the structure.

5. The Plaintiff, in order to demonstrate the structural stability and repairability of the suit premises, caused an independent structural audit to be carried out by S.P.College of Engineering. The Plaintiff claims, the said autonomous and reputed Institute, conducted a structural audit and submitted

report, unequivocally classifying the subject structure as falling in C2-B category.

6. Thus, the Plaintiff took out Chamber Summons to bring the said facts and structural audit report on record. By the impugned order, the learned Judge rejected the application for amendment, opining that the TAC report was final and, by the proposed amendment, the Plaintiff intended to indirectly challenge the TAC report.

7. Being aggrieved, the Petitioner has invoked the writ jurisdiction.

8. Mr. Naphade, learned Counsel for the Petitioner, would urge that the learned Judge, City Civil Court completely misdirected himself in delving into the merits of the amendment, while considering the application for amendment. The observations of the learned Judge that the TAC report cannot be challenged, are not in consonance with law. Even the TAC report can be assailed albeit on the limited parameters. The Petitioner could not have been, thus, precluded from even placing on record the structural audit report conducted by an Institute of repute.

9. To buttress this submission, Mr. Naphade placed reliance on the judgment in the case of **Rajesh Kumar Aggarwal and Ors. V/s. K.K.Modi and Ors.**¹.

10. Mr. Khandeparkar, learned Counsel for the Respondent No.2 joined the

¹ (2006) 4 SCC 385

issue by canvassing a submission that the endeavour of the Petitioner is to confound the confusion by filing multiple structural audit reports. Once TAC has submitted report based on the analysis of the structural audit reports filed by the Petitioner and Respondent No.2, the issue cannot be again reopened by filing another structural audit report. If such course is adopted, there will be no finality to the proceedings, putting the lives of the people at grave risk.

11. Mr. Mali, learned Counsel for the Respondent No.1 – Corporation, also supported the impugned order.

12. Undoubtedly, at the stage of consideration of application for amendment of the pleadings, the Court is required to pose unto itself the questions as to whether the proposed amendment is necessary for the determination of the real question in controversy between the parties, and, whether it has the potentiality of prejudice to the adversary. Merits of the amendment are not required to be delved into. However, in the case at hand, the Court cannot loose sight of the fact that the essential challenge is to the notices issued by the Respondent No.1 under Section 353B and 354 of the Act, 1888. The Trial Court was constrained to, and rightly so, refer the conflicting structural audit reports to the TAC for determination of the category in which the suit structure falls.

13. The TAC report has been received. Undoubtedly, the legality and validity thereof can be assailed, albeit within the limited sphere. However,

the endeavour of the Petitioner to demonstrate the professed unreliability of the TAC report by submitting structural audit report by another agency, which was not examined by TAC, cannot be countenanced.

14. In the instant case, the observations of the learned Judge, critically commented upon by Mr. Naphade, were primarily in regard to the permissibility of the course proposed to be adopted by the Petitioner – Plaintiff and not on the merits of the structural audit report submitted by the S.P.College of Engineering or the challenge sought to be mounted by the Plaintiff.

15. Learned Judge, City Civil Court, thus, committed no error in rejecting the application for amendment.

16. The Writ Petition stands dismissed.

(N.J.JAMADAR, J.)