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**N THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO.1807 OF 2011

The Municipal Corporation of Gr. Mumbai
Having their office at Mahapalika Bhavan,
Mahapalika Marg, Fort, Mumbai – 400 001.

....Appellant

(Original Defendant)

V/s.

Vidyavatidevi Ramnarayan Sahani
Age 55 years, an adult,
Indian inhabitant of Bombay,
Having structure situated at CTS No.950 (pt.),
Near Link Road, Dahisar (West), Mumbai – 68.

....Respondent
(Original Plaintiff)

Ms. Pallavi Khale i/by Ms. Komal Punjabi for the Appellant-MCGM.
Mr. J. G. Kadam i/by Mr. B.P. Shukla for the Respondent.

CORAM : JITENDRA JAIN, J.
DATED : 27 January 2026

Judgment :

1. This appeal is filed by the appellant-Corporation challenging the order dated 8 December 2009 passed by the City Civil Court whereby notice dated 4 February 2008 under Section 354A of the Mumbai Municipal Corporation Act, 1888 (for short 'the Act') was quashed and set aside.
2. The only issue which arises for my consideration is whether the City Civil Court was justified in quashing the notice under Section 354A of the Act?
3. The respondent is in occupation and possession of a structure situated at CTS No.950. It is the case of the respondent that she had

initiated the work of plastering of walls of the suit structure. The appellant-Corporation issued a notice under Section 354A of the Act on 4 February 2008 directing the respondent to stop the repairing work. The respondent replied to the said notice on 4 February 2008 itself. In the said reply, the respondent denied that the work of plastering falls within the purview of Section 354A of the Act. The respondent also stated that the suit structure is census vide Certificate dated 24 December 1978. The respondent also annexed Census Certificate, Gumasta License and application dated 22 July 2000. The respondent prayed for dropping the impugned notice. Admittedly, no order was passed by the respondent after receipt of the said reply. The respondent, therefore, filed a suit challenging the notice under Section 354A of the Act.

4. The appellant-Corporation did not file any written statement. The learned Trial Court quashed the notice on the ground that the notice is vague. The impugned notice does not describe as to what is the nature of the construction for which the 354A notice is issued. The learned Trial Court has further observed that no order has been passed adjudicating 354A notice. Therefore, the suit was decreed and the notice was set aside.

5. Ms.Khale, learned counsel for the Corporation vehemently supported the issuance of the impugned notice. She further submitted that the provisions of Section 354A does not require passing of any order. She submitted that the notice was issued for stopping the unauthorised repairing of the gala of the respondent. She, therefore, submitted that the appeal be allowed.

6. Mr. Kadam, learned counsel for the respondent states that the appellant-Corporation ought to have considered the reply filed and passed an order adjudicating the contention raised in the said reply. Learned

counsel for the respondent further relies upon the Circular dated 29 April 2006 issued by the appellant-Corporation which requires the Corporation to pass an order if reply is received pursuant to the notice issued under Section 354A of the Act. He, therefore, supported the impugned order.

7. I have heard the learned counsel for the appellant-Corporation and the respondent.

8. The circular issued by the appellant-Corporation dated 29 April 2006, in paragraph 3 it is specifically stated that in case any reply is received to a notice under Section 354A of the Act, then the concerned officer shall pass a reasoned order. This circular is binding on the authority which has issued the impugned notice dated 4 February 2008. The circular was in force on the date of issuance of the impugned notice. Admittedly, there is no order passed after receiving the reply to Section 354A notice. I have not been shown any order which restrained the authority to pass an order. Therefore, on this ground itself, no interference is called for in disturbing the findings of the learned Trial Court.

9. The notice dated 4 February 2008 only describes the work as “unauthorised repairing,” and thereafter directs that the respondent to stop erection of the said building/execution of the said work. The notice does not state as to what is the nature of the repairing which is unauthorised nor does it say as to what is the nature of erection of the said building which contravenes any provision of the Act. On the contrary, the notice calls upon the respondent to produce any permission within 24 hours from the service of the notice. Inspite of the respondent filing the reply, the appellant did not pass any order. One reason for not passing the order could be that after receipt of the reply, the Corporation may have been satisfied but still whatever is the decision of the Corporation, whether to accept the reply or

reject the same, the Corporation was duty bound to pass an appropriate order and inform the respondent. In this case, this exercise has not been done at all.

10. In view of above, no interference is called for in the order of the City Civil Court dated 8 December 2009.

11. Appeal is dismissed and the decree quashing notice under Section 354A of the Act is confirmed.

12. Ms.Khale, learned counsel for the Corporation seeks stay of the impugned order. The impugned notice is dated 4 February 2008. The impugned order was passed on 8 December 2009. There was no stay of the order passed by the City Civil Court since 2009 till today. Therefore, the request made by the learned counsel for the Corporation is not accepted since no case is made out for the stay.

(JITENDRA JAIN, J.)