

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

WRIT PETITION 7236 OF 2021

Shivsamarth Seva Sangh & Ors.

...Petitioners

vs.

M/s.Tayabji Estate Pvt.Ltd. & Ors.

...Respondents

Mr.Uday P. Warunjikar i/b. Rajaram P. Lote for Petitioners.

Mr.Narayan Sahu with Shrinivasan Mudaliar with Dinkar Desai i/b. Federal & Co. for Respondents 1 and 2.

Smt.Rekha Rane, 2nd Asstt. to Court Receiver present in Court.

CORAM : ROHIT B. DEO, J.

DATED : 5 JULY 2022

PC. :

1. With the assistance of the learned Counsel for the parties, I have gone through the report dated 30 June 2022 submitted by the Engineer and Surveyor engaged by the Court Receiver.

2. The concluding part articulates two options. In my considered view, the first option can be accepted and acted upon, at least presently. The said option reads thus :

“However, it needs to repair on regular basis. Repairs like to replace the tin sheet which are corroded & wherever gaps are observed, Replace the damaged vertical & horizontal wooden members with I or C sections. The approximate expenditure for said repair would be 19 nos x Rs 20,000/- = Rs 3,80,000/- (Rs Three Lakhs Eighty Thousand only)”

3. The learned Counsel for the Petitioners agrees that the necessary expenditure for the repairs shall be borne by the Petitioners.

4. The Petitioners have already undertaken not to create any third party interest in the subject matter of the suit and to handover the possession to the Court Receiver, as and when required in view of the judicial determination. In this view of the matter, the plaintiff is not likely to suffer any prejudice if necessary repairs are carried out as suggested by the Engineer and Surveyor engaged by the Court Receiver.

5. The Petitioners undertake that they shall themselves carry out the repairs at their own cost and strictly within the four corners of the option suggested by the Engineer and Surveyor, which is noted supra.

6. The submission of the learned Counsel for the Petitioners that the amount which may be spent for carrying out the repairs may be adjusted against the royalty paid to the Court Receiver shall be considered at a later stage.

7. The professional fees of the Engineer and Surveyor who has submitted the report shall be deposited by the Petitioners with the Court Receiver within the next week.

8. Stand over to 26 July 2022.

(ROHIT B. DEO, J.)