

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

**APPEAL FROM ORDER (ST) NO. 191 OF 2015
WITH
CIVIL APPLICATION (ST) NO. 193 OF 2015**

Shri. Voltin John Misquitta ... Appellant

The Municipal Corporation of Greater Mumbai ... Respondent

Mr. Manoj Shukla for the appellant/applicant
Mr. Vinod Mahadik for the Respondents/BMC.

**CORAM : K. K. TATED, J.
DATED : 08/01/2015.**

PC.:

. Heard learned counsel for the parties.

2 By this Appeal from Order, the appellant original plaintiff challenges the oral order dated 24.12.2014 passed by Bombay City Civil Court, at Dindoshi, Goregaon, Mumbai in Notice of Motion in L.C. suit No. 3047 of 2014 declined to grant ad-interim relief in favour of appellant original plaintiff.

3 The appellant original plaintiff filed L.C. suit no. 3047 of 2014 in the Bombay City Civil Court, at Dindoshi, Goregaon, Mumbai challenging the notice issued by the respondent corporation dated 16.07.2014 under Section 351 of the M.M.C. Act calling upon the appellant to remove unauthorised construction on survey no. 147A, Hissa No. 13, C.T.S. no. 1565.

4 It is to be noted that in the present proceeding, initially M/s. Jeevan Apsara Co. Op. Hsg. Ltd. filed S.C. Suit No. 6823 of 1997 against the Appellant in Bombay City Civil Court, Mumbai for following reliefs.

“a) That it may be declared that under the said Indenture of grant of right of way dated 30/3/1970 being Ex. “A” hereto the Plaintiffs are entitled to an access through the approach Raod shaded green in the plan annexed Ex. “A” to the plaint.

b) That the Defendant be ordered and decreed to specifically perform the covenants in the said Indenture of grant of Right of Way.

c) That the Defendant be ordered by a mandatory injunction of this Hon'ble Court to remove the said barbed wire fencing from the approach road, described in the Indenture dated 30/3/1970 Ex. “A” hereof.

d) That the Defendant, his servants and agents be permanently restrained by an order and injunction of this Hon'ble Court from obstructing the Plaintiffs their servants or agents in the use of the said approach road as provided under the said Indenture Ex “A” hereto till he 60' wide road is constructed by the Bombay Municipal Corporation and opened for the use of the public.

e) That pending the hearing and final disposal of the suit, the Defendant, be ordered to forthwith remove the said barbed wire fencing and his servants and agents be restrained by an order and injunction of this Hon'ble Court from obstructing the Plaintiffs, their servants and agents in using the said approach road pursuant to the said Deed of Grant of Way dated 30th March 1970.

f) For ad-interim injunction in terms of prayers (d) and (e) hereof;

g) For costs of the suit, and

h) For such further and order reliefs as the nature and the circumstances of the case may require.”

5 In that suit, the said society and appellant filed Consent Terms

dated 30.01.1974. That suit was decreed in terms of Consent Terms. In Consent Terms in paragraph 2, the appellant has given undertaking to the Court that appellant his heirs, executors, administrators and assignee will not obstruct and/or block and/or narrow down by any construction whatever the 15 feet wide excess road from St. Francis Road (Vile Parle) to the plaintiff's i/e. M/s. Jeevan Apsara Co. Op. Hsg. Soc. Ltd. property which shall always be kept clear and unhampered. This shows that in 1974 there was no construction on the said street of land. Hence, Corporation issued notice under Section 351 of the M.M.C. Act.

6 Considering this fact and impugned order passed by the Trial Court and particularly paragraph 7 of the order, I am of the opinion that appellant has not made out any case to interfere with the said order.

7 Hence, Appeal from Order is dismissed.

8 In view of dismissal of Appeal from Order, nothing survives in the Civil Application. Hence, Civil Application stands rejected.

(K.K.TATED, J.)