

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

**APPEAL FROM ORDER (ST) NO.10367 OF 2015
WITH
CIVIL APPLICATION (ST) NO.10369 OF 2015**

Mohammed Akbar Khan

.. Appellant

vs

Municipal Corporation of Greater Mumbai
and Anr.

.. Respondents

Mr.Tushar Kochale i/b Ms.Anjali Awasthi for the appellant

Mr.A.K.Nandanwar for the BMC

CORAM : K.K.TATED, J.
DATED : 16/04/2015

PC:

1 Heard the learned counsel for the parties.

2 This Appeal from Order is preferred by plaintiff challenging the order dated 9.4.2015 passed by Bombay City Civil Court, Mumbai in draft Notice of Motion in L.C.Suit No.916 of 2015.

3 The learned counsel for the appellant submits that the reasoned order passed by Trial Court is not ready till today. Hence, he has filed the present Appeal from Order without annexing the reasoned order.

He has placed on record Advocate's certificate dated 9.4.2015 which is on page 14 of the Appeal Memo. He submits that the Trial Court by order dated 9.4.2015 declined to grant ad-interim relief in favour of the plaintiff. Hence, the present Appeal from Order.

Few facts of the matter are as under:

4 In the present proceeding, the Corporation issued notice under section 354A of the Mumbai Municipal Corporation Act, 1888 dated 31.3.2003 stating that the plaintiff carried out unauthorised construction of loft/mezzanine floor adm @ 15'0" x 9'0" with M.S.girders and ladi-coba and construction of W.C./bath room inside the room at Haji Jan Mohd. Latif, Masjid Chawl, Room No.8, Dadasaheb Phalke Road, Dadar (E), Mumbai 400014.

5 The plaintiff by his letter dated 5.4.2003 replied the said notice stating that the loft was already there in room no.8 which was in bad condition. Hence, he has carried out necessary repairs. Thereafter, the respondent Corporation has not taken any action against the plaintiff as per earlier notice dated 31.03.2003 under section 354A of the said Act. The Corporation issued notice under section 351 of the said Act dated 3.3.2015 calling upon the plaintiff to remove unauthorised construction of loft with the help of Channels adm @ 2.80m x 4.70m height 1.90m. immediately. Thereafter the plaintiff by his letter dated 6.3.2015 informed to the Assistant Engineer, (Building and Factory) F/South Ward Parel, Mumbai 400012 that the Corporation earlier on 31.3.2003, on the same issue, issued notice under section 354A of the said Act. Thereafter, the Corporation has not taken any action. The

plaintiff placed on record earlier notice dated 31.3.2003 and his earlier reply dated 5.4.2003. The Designated Officer by his order dated 13.3.2015 held that the plaintiff failed and neglected to prove the authorisation of the loft in Room No.8. At the time of passing the said order dated 13.3.2015, the Designated Officer has not considered the earlier notice dated 31.3.2003 under section 354A of the said Act and the reply of the plaintiff dated 5.4.2003.

6 The learned counsel for the plaintiff submits that the Trial Court failed to consider the earlier notice issued by the Corporation dated 31.3.2003 and their reply dated 5.4.2003. He submits that both these documents show that the loft was in existence for last several years. He submits that pursuant to earlier notice dated 31.3.2003 under section 354A of the said Act, Corporation was satisfied with their reply dated 5.4.2003 and for last more than 12 years has not taken any action. These facts are not considered by the Trial Court at the time of rejecting their application for ad-interim relief. He further submits that even the Corporation has not filed their reply in the Notice of Motion. He submits that Notice of Motion is pending for hearing and final disposal on its own merits. He submits that in the interest of justice this Hon'ble Court be pleased to grant ad-interim relief restraining respondent Corporation from taking any coercive action against the plaintiff pursuant to the notice dated 3.3.2015 under section 351 of the said Act and order dated 31.3.2015 passed by Designated Officer. He submits that if ad-interim relief is not granted, irreparable loss and injury will be caused to the appellant. He submits that appellant has good chance of success in the present matter.

7 On the other hand the learned counsel for the respondent Corporation submits that the earlier notice issued by the Corporation dated 31.3.2003 itself shows that plaintiff carried out unauthorised construction of loft/mezzanine floor. Hence, there is no question of grant of any ad-interim relief in favour of the plaintiff.

8 I have heard both the sides at length. It is to be noted that in the present proceeding, Corporation issued earlier notice dated 31.3.2003 under section 354A of the said Act. That notice was replied by the plaintiff on 5.4.2003. Thereafter Corporation has not taken any action for more than 12 years. In 2015 Corporation issued another notice under section 351 of the said Act dated 3.3.2015 in respect of the same structure.

9 Considering the fact that Corporation has not taken any action for more than 12 years and has not filed any reply to the Notice of Motion and that Notice of Motion is pending for hearing and final disposal on its own merits, I am of the opinion that plaintiff has made out a case for ad-interim relief till the hearing and final disposal of Notice of Motion. Hence, following order:

- a) Appeal from Order is allowed.
- b) Respondent is directed to file their Affidavit-in-Reply in Notice of Motion within 4 weeks from today and serve copy on the other side.

- c) Liberty granted to the plaintiff if they so desire to file their Rejoinder within two weeks thereafter.
- d) Hearing of Notice of Motion in L.C.Suit No.916 of 2015 is expedited.
- e) Respondent Corporation is restrained from taking any coercive action against the plaintiff pursuant to notice dated 3.3.2015 under section 351 of the said Act and order dated 31.3.2015 passed by Designated Officer and Assistant Engineer, (Building and Factory) F/South Ward Parel, Mumbai 400012 till the hearing and final disposal of the Notice of Motion.
- f) Appeal from Order is disposed of accordingly.
- g) In view thereof, Civil Application does not survive. The same is also dismissed as infructuous.

(K.K.TATED, J.)