

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

CONTEMPT PETITION NO.301 OF 2014
IN
FIRST APPEAL NO.2462 OF 2007
IN
L.C.SUIT NO.7687 OF 1999

Abu Hussain

... Petitioner

V/s.

Municipal Corporation for Greater Mumbai & Ors.

... Respondents

Mr. Chiragkumar a/w. Tushar Gujjar and Arun Sharma i/b. Solicis Lex
for the Petitioner.

Mr. S. K. Sonawane for Municipal Corporation.

CORAM: K.K. TATED, J.

DATED : MARCH 9, 2015

PC. :

1. Heard the learned counsel for the parties. The Petitioner, by this petition, alleges that the Respondent Corporation, in violation of the order dated 20/11/2007 passed by this court (Coram : A. S. Oka, J.) in Civil Application No.1714/2007 in First Appeal No.2462/2007 demolished the suit structure i.e. shed bearing No.187 Bombay Talkies Compound, Malad (W), Mumbai – 400 064 having ground and two upper floors, each floor admeasuring 216 sq.ft.

2. In the present proceedings, the Petitioner initially filed L.C.Suit No.7687/1999 in Bombay City Civil Court, Mumbai challenging the notice issued by the Respondent Corporation under section 351 of the Mumbai Municipal Corporation Act, 1888 dated 06/10/1999 and for

other reliefs which read thus:

“a) That the Defendants notice bearing No. WOPN/ BF/ rv/ 351/ 811 of 99-00 dated 6.10.1999 issued under section 351 of the BMC Act and order dated 1.12.1999 be declared to be illegal, bad in law and not binding upon the Plaintiff.

b) that the Defendants, their servants, agents and/or employees be permanently restrained by an order and injunction of this Hon'ble Court from enforcing their notice No. WOPN/ BF/ rv/ 351/ 811 of 99-00 dated 6.10.1999 issued under section 351 of the BMC Act and order dated 1.12.1999 and/or from removing and/or demolishing the said shed bearing Shed No.187, Bombay Talkies Compound, Malad (W), Bombay – 64 having ground and two upper floor; each floor admeasuring 216 sq.ft.

b-1) that this Hon'ble Court be pleased to direct the Defendant by a mandatory order and injunction of this Hon'ble Court to reconstruct the second floor of the Plaintiffs structure admeasuring 216 sq.ft.i.e. shed bearing No.187, Bombay Talkies Compound, Malad (W), Bombay – 64.

b-2) that pending the hearing and final disposal of this suit, the Defendants, their servants, agents and/or any person claiming through under or by them be directed by mandatory order and injunction of this Hon'ble Court to reconstruct the second floor of the Plaintiffs structure admeasuring about 216 sq.ft. i.e. 2nd floor of Shed No.187, Bombay Talkies Compound, Malad (W), Bombay – 64.

b-3) that this Hon'ble Court be pleased to direct the Plaintiff to reconstruct the 2nd floor of the Plaintiffs structure i.e. admeasuring 216 sq.ft. 2nd floor of Shed No.197, Bombay Talkies Compound, Malad (W), Bombay – 400064.

b-4) that pending the hearing and final disposal of the suit this Hon'ble Court be permit the Plaintiff by mandatory order and injunction of this Hon'ble Court to reconstruct second floor of the Plaintiffs structure i.e. Shed No.187, Bombay Talkies Compound, Malad (West), Bombay – 400 064.

(c) for interim and ad-interim reliefs in terms of prayer (b), (b-2) and (b-4) above.

(d) for costs of the suit.

(e) for such further and other reliefs as the nature and circumstances of the case may require.”

3. That suit was decreed by the Trial Court in terms of prayer clauses (a), (b) and (b3) by judgment and decree dated 24/08/2006.

4. Being aggrieved by the judgment and decree passed by the Trial Court, the Respondent Corporation preferred First Appeal No.2462/2007 in this court. In that appeal, they preferred Civil Application No.1714/2007 for stay of the operation and implementation of the judgment and decree dated 24/08/2006 passed by the Trial Court. The following are the prayers in the said Civil Application:

“(a) The papers and proceedings called for.

(b) The order passed by Hon'ble Court dated 24/08/2006 be stayed and Respondent No.1 be restrained from carrying out any construction pursuant to said order.

(c) The order passed by Hon'ble Court dated 24/08/2006 by decreeing suit in terms of prayer a, b, and c be set aside and quashed.

(d) And for such other orders and reliefs as may be deemed fit and proper in the interest of justice.

(e) Cost of the Application be provided.”

5. That Civil Application was on board before this court (Croam : A. S. Oka, J.) for hearing on 20/11/2007 when this court passed the following order :

“1. Rule returnable on 31st January. To be placed on board along with the Civil Application for interim relief in First Appeal No.2936 of 2006. Till further order there will be ad-interim relief in terms of prayer clause (b).”

6. Thereafter, that Civil Application was made absolute by order dated 31/01/2008 and confirmed the ad-interim relief till hearing and final disposal of the First Appeal.

7. The learned counsel for the Petitioner submits that during pendency of the said proceedings, the Respondent Corporation, on 11/03/2014 demolished the suit structure. Hence, they preferred the present contempt petition for taking action against the Respondents and their officers for violating the order dated 20/11/2007 passed by this court.

8. The learned counsel for the Petitioner submits that this court, by order dated 20/11/2007 stayed the operation and implementation of the judgment and decree passed by the Trial Court on 24/08/2006, in spite of that the Respondent Corporation has demolished the suit structure. He submits that while considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. The learned counsel for the Petitioner, in support of their contention relies on the judgment of the Apex Court in the matter

of **Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association CSI Cinod Secretariat, Madras MANU/SC/0501/1992**, particularly paragraph 10 of the judgment, which reads thus :

“10. In the instant case, the proceedings before the Board under Sections 15 and 16 of the Act had been terminated by order of the Board dated April 26, 1990 whereby the Board, upon consideration of the facts and material before it, found that the appellant-company had become economically and commercially non-viable due to its huge accumulated losses and liabilities and should be wound up. The appeal filed by the appellant-company under Section 25 of the Act against said order of the Board was dismissed by the Appellate Authority by order dated January 7, 1991. As a result of these orders, no proceedings under the Act was pending either before the Board or before the Appellate Authority on February 21, 1991 when the Delhi High Court passed the interim order staying the operation of the Appellate Authority dated January 7, 1991. The said stay order of the High Court cannot have the effect of reviving the proceedings which had been disposed of by the Appellate Authority by its order dated January 7, 1991. While considering the effect of an interim order staying the operation of the order under-challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence. This means that if an order passed by the Appellate Authority is quashed and the matter is remanded, the result would be that the appeal which had been disposed of by the said order of the Appellate Authority would be restored and it can be said to be pending before the Appellate Authority after the quashing of the order of the Appellate Authority. The same cannot be said with regard to an order staying the operation of the order of the Appellate Authority because in spite of the said order, the order of

the Appellate Authority continues to exist in law and so long as it exists, it cannot be said that the appeal which has been disposed of by the said order has not been disposed of and is still pending. We are, therefore, of the opinion that the passing of the interim order dated February 21, 1991 by the Delhi High Court staying the operation of the order of the Appellate Authority dated January 7, 1991 does not have the effect of reviving the appeal which had been dismissed by the Appellate authority by its order dated January 7, 1991 and it cannot be said that after February 21, 1991, the said appeal stood revived and was pending before the Appellate Authority. In that view of the matter, it cannot be said that any proceedings under the Act were pending before the Board or the Appellate Authority on the date of the passing of the order dated August 14, 1991 by the learned Single Judge of the Karnataka High Court for winding up of the company or on November 6, 1991 when the Division Bench passed the order dismissing O.S.A.No. 16 of 1991 filed by the appellant company against the order of the learned Single Judge dated August 14, 1991. Section 22(1) of the Act could not, therefore, be invoked and there was no impediment in the High Court dealing with the winding up petition filed by the respondents. This is the only question that has been canvassed in Civil Appeal No. 126 of 1992, directed against the order for winding up of the appellant company. The said appeal, therefore, fails and is liable to be dismissed.

9. The learned counsel for the Petitioner further submits that the Respondent Corporation, in their Affidavit-in-Reply dated 01/12/2014 specifically stated that at the time of executing the demolition order in respect of the other suit premises, they demolished the present suit structure. To that effect, the learned counsel for the Petitioner relies on paragraph 8, 9 and 12 of the said Affidavit-in-Reply. The learned counsel for the Petitioner submits that in spite of stay order, the Respondent Corporation demolished the suit structure on 11/03/2014. To that effect, the Petitioner made a statement in paragraph 4 of contempt petition which reads thus:

“The contemnor/ Respondent No.1, despite having preferred the captioned appeal before this Hon'ble Court against the said judgment and decree which appeal is currently pending before this Hon'ble Court in which there is no stay operating against the said decree, have contrary to and in clear violation of the said decree illegally demolished the said structure of the said land on 11 March 2014.”

10. On the basis of this submission, the learned counsel for the Petitioner submits that this Hon'ble Court be pleased to take an action against the Respondent corporation under the Contempt of Courts Act for violating the judgment and decree passed by the Trial Court.

11. On the other hand, the learned counsel for the Respondent corporation vehemently opposed the present petition. He submits that the judgment and decree passed by the Trial Court was stayed by this court on 20/11/2007 in Civil Application No.1714/2014, wherein ad-interim relief was confirmed 31/08/2008. He submits that on the date of demolition of the suit structure i.e. on 11/03/2014, stay was operating in favour of the corporation, therefore, there is no question of taking any action under the Contempt of Courts Act. He further submits that the Petitioner made incorrect statement in the petition therefore, they are not entitled to any equitable relief in the present petition. He further submits that the petitioner preferred Civil Application No.2554/2014 for allowing them to reconstruct said structure. In that Civil Application, the Petitioner had made the following prayers:

“(a) The Applicant/ Respondent No.1 be allowed to reconstruct the said structure which has been illegally demolished by the

Appellant, and re-construction to be in pursuance of the orders of this Hon'ble Court;

(b) The Appellants along with the Respondent No.2 to 5 its servants, officers, agents, representatives, trustees and or any other persons claiming through them be restrained by a permanent injunction from interfering in possession of the Appellant and or cause interference to the structure of the Appellant at any time or cause interference in the act of restoration and reconstruction of whatsoever nature, pending the final adjudication of the Appeal No.2462 of 2007.

(c) Pending the hearing and final disposal of the Application, the Appellant and Respondent Nos.2 to 5 be restrained by an order of injunction from interfering in the act of reconstruction or restoration of the said structure and/or interfering at the present situation at site;

(d) Pending the hearing and final disposal of the Application, the Appellant and Respondent Nos.2 to 5 be restrained by an order of injunction from interfering and/or taking possession of the articles lying at the site of the said structure which has been demolished and the articles belonging to the Respondent No.1 and unlawful disposal of the same and that status quo be maintained.

(e) Ad-interim and interim reliefs in terms of prayer clauses (a) & (b) above.

(f) for such further and other reliefs as the nature and circumstances of the case may require.

(g) For costs of this Application.”

12. The learned counsel for the Respondent submits that in any case, the Petitioner has an alternate remedy for their grievance. Hence, there is no question of entertaining the present petition as it is filed by the Petitioner.

13. The Petitioner knowing about the order passed by this court in Civil Application No.1714/2007 staying the operation and implementation of the judgment and decree passed by the Trial Court, made incorrect statement in paragraph 4 of the contempt petition. In paragraph 4 of the petition, the Petitioner made a statement that “there is no stay operating against the said decree”. Bare reading of the order dated 20/11/2007 shows that after giving an opportunity to both sides, this court granted stay to the operation and implementation of the judgment and decree passed by the Trial Court. That order to be read as it is. A litigant who comes before the court by making an incorrect statement, is not entitled any equitable reliefs. The Apex Court in the matter of *Jhareshwar Prasad Paul and Anr. Vs. Tarak Nath Ganguly and Ors. 2002 (5) SCC 352* held that the court exercising contempt jurisdiction is not entitled to enter into questions which have not been dealt with and decided in the judgment and order, violation of which is alleged by the Applicant. The court has to consider the direction issued in the judgment or order and not to consider the question as to what the judgment or order should have contained.

14. In the present proceedings the order passed by this court on 20/11/2007 in Civil Application No.1714/2007 was made absolute by order dated 31/01/1998 till hearing and final disposal of the First Appeal. That order was passed after hearing both sides. In view of the decision in the matter of Jhareshwar Prasad Paul and Anr. (supra), the ratio laid down in the matter of Shree Chamundi Mopeds Ltd. (supra) is not applicable in the facts and circumstances of the present case.

15. Apart from the above mentioned facts and circumstances of the present case, the Petitioner also filed an Application No.2554/2014 for permission to reconstruct the suit structure, which is pending for hearing and final disposal on its own merits. Same will be decided on its own merits.

16. In view of the subsequent development and the reasons disclosed in hereinabove, I do not find any substance in the present petition. Hence, the Petition stands rejected.

(K.K. TATED, J.)