

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE SIDE JURISDICTION.

CIVIL APPLICATION NO.1660/2015
IN
FIRST APPEAL NO.601/2015

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. V. K. Gupta for the Applicant
Mrs. M. R. Bhoir for the Respondent.

CORAM : K. K. TATED, J.
DATE : JULY 31, 2015

P.C.:

1. Heard. This Application is preferred by the Plaintiff for an order of injunction restraining the Respondent Corporation from taking any coercive action of demolition of suit structure i.e. Unit No.101, situated at 1st Floor, VTM-2, Building Condominium, Mehra Industrial Estate, Andheri Kurla Road, Sakinaka, Mumbai – 400072 pursuant to the notice under section 351 of the Mumbai Municipal Corporation Act, 1888 dated 11/08/2006 and order dated 03/11/2006.

2. The learned counsel for the Applicant submits that during pendency of the proceedings before the Trial Court, there was interim relief in favour of the Applicant. He submits that the Trial

Court, by decree dated 26/03/2015 dismissed the Plaintiff's L.C.Suit No.5063/2006. He submits that in the present proceedings, the Respondent-Corporation issued notice under section 351 of the Mumbai Municipal Corporation Act, 1888 dated 11/08/2006 in respect of the alleged unauthorised construction of mezzanine floor by the Applicant. He submits that as soon as the notice was issued, they replied by their letter dated 17/08/2006. He submits that they placed on record before the concerned authority, the assessment bills issued by the Respondent Corporation in respect of the mezzanine floor. He submits that these facts were not considered properly by the Trial Court at the time of passing the decree.

3. The learned counsel for Applicant submits that as the First Appeal is already admitted by this court and the interim protection granted by the Trial Court was continued since 2006, this Hon'ble Court be pleased to allow the present Civil Application restraining the Respondent Corporation from taking any coercive action against them till hearing and final disposal of the First Appeal. He submits that if interim stay is not granted, irreparable loss and injury will be caused to them.

4. On the other hand, the learned counsel for the Respondent Corporation vehemently opposed the Civil Application. They filed Affidavit-in-Reply dated 15/07/2015. The learned counsel for the Respondent submits that the Trial Court has considered in detail that the Applicant Plaintiff failed to place on record any documentary evidence to show that the mezzanine floor was constructed by them after obtaining permission from the Corporation. He further submits that the Applicant has not placed on record any document to show the existence of the mezzanine floor prior to the datum line i.e. 17/04/1961. Hence, there is no substance in the Civil Application. Same be dismissed with costs.

5. It is to be noted that in the present proceedings during pendency of the Trial, the Trial Court granted interim relief which was continued till passing the decree dated 26/03/2015. The learned counsel for the Applicant pointed that the assessment order issued by the Respondent Corporation for the year 2003. He further submits that the Applicant specifically stated in plaint that the building itself was constructed in the year 1973. Hence, there is no question of bringing on record any documentary evidence to show the

alleged unauthorised construction of mezzanine floor was in existence before the datum line i.e. 17/04/1961. Considering these facts, I am of the opinion that the Applicant has made out a case for allowing the Civil Application.

6. Hence, Civil Application is made absolute in terms of prayer clause (a) which reads thus:

(a) Pending the hearing and final disposal of the First Appeal, the Respondent No.1, their servants and/or agents be restrained by an order and injunction of this Hon'ble Court from taking any action of demolition of the suit premises viz. mezzanine floor, Unit No.101, situated at 1st Floor, VTM-2, Building, Condominium, Mehra Industrial Estate, Andheri Kurla Road, Sakinaka, Mumbai – 400072 pursuant to Notice u/s.351 of the BMC Act bearing No.L/BF-IV/351/1465/06-07 dated 11/08/2006 and order No.L/BF-4/351/1465/06-07 dated 03/11/2006

b) The Applicant is restrained from creating any third party right, title and interest in respect of the suit property till hearing and final disposal of the First Appeal.

c) Civil Application stands disposed off accordingly.

JUDGE