

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

APPEAL FROM ORDER NO.528 OF 2014
WITH
CIVIL APPLICATION NO.621 OF 2014

Mr. Mohanlal B. Mota

... Appellant

V/s.

Municipal Corporation for Greater Mumbai & Ors.

...Respondents

Mrs. Priti Shah for the Appellant

Mr. Vinod Mahadik for Municipal Corporation.

CORAM: K.K. TATED, J.

DATED : FEBRUARY 17, 2015

PC. :

1. Heard the learned counsel for the parties. By this appeal, the Appellant Plaintiff challenges the order dated 11/04/2014 passed by the Bombay City Civil Court, Mumbai in Notice of Motion No.2171/2006 in L.C.Suit No.2396/2006 rejecting the Plaintiff's Application for injunction restraining the Respondent Corporation from implementing notice under section 351 of the Mumbai Municipal Corporation Act, 1888.

2. The Plaintiff – tenant of the suit premises filed L.C.Suit No.2396/2006 in Bombay City Civil Court, Mumbai challenging the notice issued by the Respondent Corporation dated 17/04/2006 and the order passed by Defendant No.2 dated 23/05/2006 holding that the suit structure i.e. construction of RSJ ladi coba ladi, mezzanine floor admeasuring 14.25 x 2.85 mtr. on ground floor shop No.8/10,

Liladhar Building, Borabazar Street, Fort, Mumbai – 400 001 is unauthorised construction and directing the Plaintiff to remove the same. In the said suit, the Plaintiff preferred Notice of Motion No.2171/2006 which was decided by the Trial Court on 11/04/2014. Thereafter the Appellant preferred present appeal.

3. The learned counsel for the Plaintiff submits that the Trial Court initially granted ad-interim relief in Notice of Motion No.2171/2006 that was continued till hearing and final disposal of the Notice of Motion. Thereafter, this court granted ad-interim relief on 08/08/2014. She submits that the said ad-interim relief is continued till today. She further submits that before the Trial Court, the Plaintiff filed his affidavit of evidence. Moreover, his cross-examination is also over. She submits that considering the subsequent development that the trial is already started, this Hon'ble Court be pleased to continue the ad-interim relief granted by this court till hearing and final disposal of the suit.

4. On the other hand, the learned counsel for the Respondent Corporation vehemently opposed the Appeal from Order. He submits that the Trial Court has categorically held that neither the Plaintiff nor the owner of the suit property placed on record any document to show that the suit structure was constructed by them after obtaining permission from the Corporation. He submits that for want of documentary evidence in respect of the suit structure, the Plaintiff is not entitled to any relief from this court. Hence, there is no substance in the Appeal from Order.

5. Admittedly, in the present proceedings, the ad-interim relief is running in favour of the Plaintiff since 2006. Now, trial in the suit is already started. The Plaintiff has filed his affidavit of evidence. Moreover, cross-examination of the Plaintiff i.e. PW.1 is already over. Considering these facts, I am of the opinion that the interim protection granted by this court to continue till hearing and final disposal of the suit. Without recording any reasons on merits, following order is passed:

- a) Ad-interim protection granted by this court on 8th May 2014 to continue till hearing and final disposal of the L.C.Suit No.2396/2006.
- b) The Appellant / Plaintiff is restrained by an order of injunction from creating any third party right, title and interest in respect of the suit property till hearing and final disposal of the suit.
- c) This court expects from the Trial Court to dispose of the L.C.Suit No.2396/2006 as early as possible but in any case on or before 31/12/2015.
- d) Appeal from Order stands disposed of accordingly.
- e) In view of disposal of the Appeal from Order, nothing survives in the Civil Application. Same stands dismissed as infructuous.

(K.K. TATED, J.)