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IN THE HIGH COURT OF JUDICATURE AT MUMBAI

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER STAMP NO. 13272 OF 2015
WITH
CIVIL APPLICATION STAMP NO. 13276 OF 2015

Shamim Ahmed Siddiqui .. Appellant

Vs.

The Municipal Corporation of Greater
Mumbia and another .. Respondents

Mr.S.R.Ganbavle i/b Mr.Abhijit M.Adagule, Advocate for the Appellant.
Ms.M.R.Bhoir, Advocate for the Respondents- B.M.C.

CORAM : R. G. KETKAR, J.
DATE : 06th MAY, 2015

P.C. :

. Not on board. At the request of Mr.S.R.Ganbavle, taken up in the Production Board.

2. As the Regular Court presiding over by Hon'ble Mr.Justice K.K.Tated is not available, matter is produced before me as per the administrative order passed by the Hon'ble Chief Justice.

3. Heard Mr.S.R.Ganbavle, learned Counsel for the appellant and Ms.M.R.Bhoir,, learned Counsel for the respondents at length.

4. By this appeal, original plaintiff has challenged the order dated 28/04/2015 passed by the learned Judge, the Bombay City Civil Court at Bombay in Notice of Motion No. __ of 2015 in L.C. Suit

No. 1117 of 2015. By that order, the learned trial Judge refused ad-interim order.

5. Admit. Ms.M.R.Bhoir waives service. At the request and by consent of the parties, appeal is taken up for final hearing.

6. In support of this appeal, Mr.Ganbavle submitted that respondents, hereinafter referred to as defendants, have issued notice under section 351 of the Mumbai Municipal Corporation Act, 1888 (for short 'Act') on 08/01/2015. Notice was replied by the plaintiff through his advocate on 20/01/2015. On 21/04/2015, the Assistant Engineer (Building and Factory) 'E' Ward passed order, thereby not accepting explanation submitted by the plaintiff on the ground that the plaintiff did not produce satisfactory and conclusive proof/documentary evidence to prove the construction of notice structure prior to the detum line for the tolerating residential structures which is 17/04/1964 or to prove that the notice structure is an authorized one constructed as per plans approved by Executive Engineer (Building Proposal) City or by any other competent authority. Mr.Ganbavle submitted that in fact the Corporation has granted permission on 22/05/1961 for carrying out minor repairs to the existing residential premises with mezzanine floor subject to the conditions set out therein. He fairly submitted that the said permission, however, was not produced along with reply to the notice issued under section 351 of the Act. The said permission was

also not produced along with the plaint as also in the affidavit in support of the motion. He submitted that appellant-plaintiff may be permitted to file fresh reply within 2 weeks from today to the notice under section 351 enclosing therewith permission dated 22/05/1961. He submitted that the Corporation may be directed to consider afresh the matter. If such course is adopted, he will not press this appeal as also withdraw the Suit as also Motion. Ms.Bhoir submitted that the Corporation will take appropriate decision within 4 weeks from the receipt of the reply and pass a speaking order and intimate that order to the plaintiff.

7. It is no doubt true that the plaintiff has produced the permission dated 22/05/1961 for the first time in this Court. It is, therefore, necessary to find out whether permission dated 22/05/1961 is in respect of the property in question as also whether the plaintiff has carried out minor repairs as per that permission.

8. In view thereof, it is necessary to give opportunity to the plaintiff to file fresh reply and produce the permission along with reply. It is also necessary to direct the Corporation to consider afresh the reply and the permission and take decision in accordance with law. Appeal from Order is accordingly disposed of in the following terms.

i) The Appellant – plaintiff shall file fresh reply to the notice dated 08/01/2015 within 2 weeks from today enclosing therewith permission No. AE/ 7562/E of 1960-61 dtd. 22/05/1961.

ii) Upon receipt of reply and the permission, the Corporation shall take appropriate decision within 4 weeks in accordance with law and pass a speaking order.

iii) The Corporation shall intimate decision to the plaintiff forthwith. The Corporation shall not implement the notice dated 08/01/2015 for a period of 4 weeks from the date of the service of that order, in case the order is adverse to the plaintiff.

9. In view thereof, Appeal From Order as also in the Suit and the Motion stand disposed of as not pressed. The plaintiff shall immediately produce this order before the trial Court for passing appropriate order as regards withdrawal of the Suit and the Motion.

10. It is expressly made clear that I have not examined contentions based on permission dated 22/05/1961. All the contentions in that regard are expressly kept open.

11. In view of disposal of the Appeal, Civil Application Stamp No. 13276 of 2015 for injunction does not survive and the same is disposed of. Order accordingly.

(R. G. KETKAR, J.)