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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.768 OF 2015
IN
NOTICE OF MOTION NO.1007 OF 2015
IN
L.C. SUIT NO.239 OF 2015

WITH
CIVIL APPLICATION NO.937 OF 2015
IN
APPEAL FROM ORDER NO.768 OF 2015
IN
NOTICE OF MOTION NO.1007 OF 2015
IN
L.C. SUIT NO.239 OF 2015

Khalid Latif Soofi Qureshi	...Appellant
V/s.	
The Municipal Corpn. of Gr.Mumbai & Anr.	...Respondents

Mr.Y.E. Moomen i/b Ms.Manisha Gawde for the Appellant.

Mr.Vishal Kanade with Ms.Usha Gadagkar and Ms.H. Diamondwala
i/b Diamondwala & Co. for the Respondent.2.

Ms.M.R. Bhoir for the Respondent No.1 – BMC.

CORAM : R.D. DHANUKA, J.
DATE : 16TH NOVEMBER, 2015.

P.C. :-

1. By this appeal filed by the appellant the appellant has impugned the order dated 9th May, 2015, passed by the Bombay City Civil Court, Mumbai dismissing the notice of motion filed by the

appellant (original plaintiff) *inter-alia* praying for an injunction against the Municipal Corporation from taking any action for demolition or implementing the notice issued under section 351 of the Mumbai Municipal Corporation Act (for short "M.M.C. Act") dated 3rd December, 2014.

2. It is the case of the appellant that the appellant had acquired the tenancy rights under the agreement dated 24th March, 2003 from the respondent no.2 in respect of room no.5-B, 2nd floor, 8, Victoria Terrace Building, 3rd Victoria Cross Lane, Near Balaji Hospital, Byculla, Mumbai – 400 027.

3. On 28th April, 2013, the respondent no.2 filed the eviction suit against the appellant on the ground of addition and alteration and other grounds in the Small Causes Court. On 26th May, 2014, the Municipal Corporation issued a notice under section 488 of the M.M. C. Act and inspected the premises on 30th May, 2014. According to the Municipal Corporation upon such inspection of the premises, it found the additions and alterations in the premises and issued a notice on 18th July, 2014 under section 351 of the M.M.C. Act alleging that the construction of the toilet block in the premises was unauthorized. On 25th July, 2014, the appellant replied to the said notice alleging that prior to the tenancy granted in favour of the appellant, one Mehamood Bulbule was the tenant and that the toilet

block was in existence in the premises. The appellant also applied for inspection of various documents from the Municipal Corporation. Hearing was fixed on several occasions by the concerned officer. The Municipal Corporation ultimately passed an order for removal of the alleged structure holding that the appellant had failed to produce any proof by obtaining any permission to carry out construction in question and the said structure was not constructed prior to the datum line of 17th April, 1964. The appellant thereafter filed a suit in the Bombay City Civil Court and applied for injunction.

4. Learned counsel for the appellant invited my attention to some of the documents annexed to the appeal paper book as well as separate compilation filed before this Court. He submits that since the Municipal Corporation had issued notice under section 351 of the M.M.C. Act, the Municipal Corporation ought to have produced relevant documents to show that in the sanctioned plan of the Municipal Corporation there was no such structure in existence. He submits that insofar as the action initiated by the respondent no.1 against the appellant under sections 488 as well as 351 of the M.M.C. Act is concerned, it was at the instance and in collusion with the respondent no.2, who has filed a suit for eviction against the appellant before the Small Causes Court. The said suit is pending.

5. He submits that though the appellant pleaded before the

learned trial Judge that except the structure 6-B, all other tenements in the building were self-contained, the learned trial Judge has recorded the alleged admission on the part of the appellant in paragraph 7 of the impugned order.

6. Learned counsel appearing for the Municipal Corporation has supported the order passed by the learned trial Judge and submits that upon taking physical inspection of the suit structure, the Municipal Corporation has found that there was unauthorized construction. Though various opportunities were given to the appellant to produce the documents in respect of the claim of the appellant that the suit structure was authorized or that the same was constructed prior to the datum line of 17th April, 1964, the appellant could not produce any documents. Learned counsel submits that before the learned trial Judge the appellant had not disputed the existence of the toilet block in her room only and that other rooms were having common bathroom and WC. She submits that this Court thus should not interfere with the order passed by the learned trial Judge.

7. Mr. Kanade, learned counsel for the respondent no.2 invited my attention to some of the documents annexed to the appeal paper book as well from the separate compilation filed by the respondent no.2. Reliance is placed on copies of two plans annexed

to the compilation filed by the respondent no.2. He submits that insofar as the plan annexed at page no.44 of the compilation is concerned, the said plan was furnished to the respondent no.2 by the Municipal Corporation under the provisions of the Right to Information Act which clearly indicates that there was no provision for construction of any separate and self contained toilet block in any of the tenements constructed by the landlord.

8. Learned counsel also supported the *prima-facie* observations made by the learned trial Judge and placed reliance on the inspection report submitted by M/s.Powle PN & Associates pursuant to the order passed by the Small Causes Court showing that except in room no.5B of the premises, no other room was having the facility of bath cum toilet. Insofar as the grievance of the appellant that the learned trial Judge has recorded the wrong statement alleged to have been made by the appellant in paragraph 7 of the impugned order is concerned, he submits that if according to the appellant, he had not made any such statement before the learned trial Judge, he was required to apply for clarification of the order passed by the learned trial Judge before the concerned Judge himself and this Court cannot ignore such concession made by the appellant at that stage. He submits that the landlord had never applied for construction of any self contained toilet block in any of the tenements and thus the action

initiated by the Municipal Corporation was in order. He submits that the onus was on the appellant to prove that the said structure or the WC cum bathroom was authorized structure.

9. Learned counsel appearing for the respondent no.2 also invited my attention to the agreement entered into between the appellant and the respondent no.2 and would submit that even in the said agreement relied upon by the appellant, there was no mention of any self contained toilet block in the said premises 5-B. He submits that in view of the appellant having carried out unauthorized construction by constructing toilet block in the suit flat without permission from the Municipal Corporation and his client, there is seepage of water from the said unauthorized structure which is causing lot of nuisance and inconvenience to other occupants of the building.

10. There is no dispute that the appellant had acquired the tenancy in respect of room 5-B only on 24th March, 2003. Learned counsel for the appellant states that since the appellant was not in possession of the premises on the datum line, the appellant would not be able to submit any sanctioned plan before this Court or before trial Court. A perusal of the said agreement annexed in compilation of the documents does not indicate that the structure given to the appellant was inclusive of self contained toilet block. The Municipal Corporation

has issued a notice under section 351 of the M.M.C. Act after taking inspection of the said structure. Though several opportunities were granted to the appellant to produce the documents in respect of his claim that the suit structure was authorized, the appellant could not produce any documents before the concerned officer of the Municipal Corporation and before the trial Court. In my view, the onus was on the appellant to prove that he had either any permission to construct such structure from the Municipal Corporation or that the same was in existence prior to the datum line of 17th April, 1964.

11. A perusal of the compilation of documents submitted by the respondent no.2 *prima-facie* indicates that the Municipal Corporation had issued the plan which is annexed at page no.44, pursuant to the application made under the R.T.I. Act. A perusal of the said plan does not indicate that any such self contained toilet block was proposed to be constructed by the landlord in the said room.

12. A perusal of the order passed by the learned trial Judge also indicates that he has taken into consideration the inspection report submitted by M/s.Powle PN & Associates on 2nd November, 2014 filed pursuant to an order passed by the Small Causes Court in the eviction suit filed by the respondent no.2. The said inspection report *prima-facie* shows that all the rooms were inspected and also

WC and bathroom was found in room no.5-B and this facility was not available to other rooms. The learned trial Judge has also recorded the statement in paragraph 7 of the impugned order that the plaintiff had not disputed the existence of the toilet block in her room and that the other rooms are having common bathroom and WC. Insofar as the submission of learned counsel for the appellant that the said statement recorded in paragraph 7 was not made by the appellant and has been erroneously recorded by the learned trial Judge is concerned, it is not in dispute that the appellant did not apply before the learned trial Judge for modification of the said order on the ground that the said statement was erroneously recorded by the learned trial Judge and thus this Court cannot allow the appellant to urge this submission at this stage.

13. In my view, since the appellant who was required to prove prima-facie that the impugned structure was authorized and/or was in existence prior to the datum line, has failed to satisfy the learned trial Judge about the authenticity of the said structure, the learned trial Judge has rightly considered other evidence produced by the defendants in respect of their respective plea that the same was unauthorized and was constructed without the permission of the Municipal Corporation. The learned trial Judge has also considered the inspection report submitted before the Small Causes Court.

14. In my view, the impugned order passed by the learned trial Judge is a reasoned order and has been passed after considering the documents and material on record and there is no infirmity found in the impugned order. The appeal is devoid of merits and is accordingly dismissed.

15. In view of disposal of the appeal from order, the civil application does not survive and is accordingly disposed of.

16. Interim protection continued by this Court to continue for a period of eight weeks from today.

(R.D. DHANUKA, J.)