

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

**APPEAL FROM ORDER (ST) NO.14748 OF 2015
WITH
CIVIL APPLICATION (ST). NO.14749 OF 2015**

Sureshkumar Fojmal Kataria .. Appellant

vs.

Municipal Corporation of
Greater Bombay .. Respondent

Mr.Satyam N. Vaishnava with Ms.Nupur Mukherjee with Mr.Anil
Chavan i/b Mr.N.N.Vaishnava and Co. for the Appellant

Mr.A.K.Nandanwar for the BMC

CORAM : K.K.TATED, J.
DATED : 09/06/2015

PC:

1 Heard the learned counsel for the parties.

2 This Appeal from Order is preferred by original plaintiff
challenging the order dated 30.05.2015 passed by Bombay City Civil
Court, Mumbai in Notice of Motion refusing to grant ad interim relief.

3 In the present proceeding, the respondent Corporation issued a
notice under section 351 of the Mumbai Municipal Corporation Act,
1888 dated 04.03.2015 calling upon the appellant plaintiff to remove

unauthorised loft in the suit premises i.e. Ground Floor, 39 Tadvadi, Mumbai 400002. The plaintiff immediately replied the said notice on 17.3.2015 relying on relevant documents to show that the loft was in existence prior to 1986. Thereafter the Assistant Engineer (B & F) 'C' Ward by its order dated 25.5.2015 held that the plaintiff failed and neglected to place on record relevant documents to show that the loft was in existence prior to 1986. Hence, the plaintiff filed the L.C.Suit (ST) No.5946 of 2005 in the Bombay City Civil Court, Mumbai restraining respondent Corporation from taking any coercive action pursuant to the order dated 25.05.2015 arising out of notice dated 4.3.2015 under section 351 of the Mumbai Municipal Corporation Act, 1888 in respect of loft situated in a suit premises bearing Shop No.1 and 1A situated on the Ground Floor, R.S. Navalkar Road, 39, Tadvadi, Chirabazar, Mumbai 400 002. The Trial Court by impugned order dated 30.5.2015 declined to grant ad-interim relief on the ground that the plaintiff failed and neglected to place on record relevant documents. Hence, the present Appeal from Order.

4 The learned counsel for the plaintiff submits that the plaintiff is in occupation of the suit premises on rental basis since 1986. At that time, loft was in existence. He submits that thereafter, the landlord filed R.A.E. Suit No.624 of 2014 against the plaintiff in Small Causes Court for eviction on the ground of carrying out permanent alternation in the suit premises. He submits that at the instance of landlord, respondent Corporation issued notice under section 351 of the said Act. He submits that though the plaintiff placed on record several documents as stated in their reply dated 18.3.2015 neither the Trial

Court nor the concerned officer of respondent Corporation considered the same.

5 The learned counsel for the plaintiff submits that without going into the merits of the matter he received instructions from his client that the plaintiff is ready and willing to make appropriate application for regularisation to the Corporation. He submits that for making application for regularisation, Corporation insists for No-Objection Certificate from landlord. He submits that in view of pendency of R.A.E.Suit No.624 of 2015 in the court of Small Causes at Bombay, it is not possible to take No-Objection Certificate from the landlord. He submits that plaintiff may be permitted to make application for regularisation to the Corporation without any No-Objection Certificate from the landlord and same be considered by the Corporation.

6 The learned counsel for the respondent Corporation submits that if the plaintiff makes application for regularisation within stipulated time, they will not insist No-Objection Certificate from the landlord and they will consider the same on its own merits.

7 Considering the above mentioned facts, following order is passed:

a) Permission granted to the plaintiff to withdraw Appeal from Order with liberty to file appropriate application for regularisation of the suit structure to the respondent / Corporation within four weeks from today.

- b) Corporation is directed to consider the regularisation application of plaintiff, if filed within stipulated time on its own merits without insisting No-Objection Certificate from the landlord.
- c) The Corporation is directed to decide the said application within 8 weeks thereafter.
- d) Corporation is directed to inform their decision in writing either to plaintiff or his Advocate.
- e) If order goes against the plaintiff respondent Corporation is directed not to take any coercive action against the plaintiff for four weeks from communication of order.
- f) Till communication of the order is passed by Corporation on regularisation application and four weeks thereafter, parties are directed to maintain status quo as of today.
- g) If plaintiff failed to make application for regularisation within stipulated time, respondent/Corporation is free to take action against suit structure.
- h) Appeal from Order as well as Civil Application stand dismissed as withdrawn.
- i) Liberty granted to the plaintiff to make appropriate application to the Trial Court for withdrawal of the suit.

(K.K.TATED, J.)