

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

APPEAL FROM ORDER (ST) NO.14778 OF 2015
WITH
CIVIL APPLICATION (ST) NO.14779 OF 2015

Ramdas Sheshgiri Pai & Anr. ... Appellants
V/s.
Mumbai Municipal Corporation & Ors. ... Respondents

Mr. Rajendra R. Yadav for the Appellants
Mrs. M. R. Bhoir for the Respondents.

CORAM: K.K. TATED, J.
DATED : JUNE 10, 2015

PC. :

1. Heard the learned counsel for the parties. This Appeal from Order is preferred by the Plaintiff challenging the order dated 05/06/2015 passed by the Bombay City Civil Court, Mumbai in draft Notice of Motion declining to grant ad-interim relief.

2. In the present proceedings, the Plaintiff is a tenant of suit premises i.e. Shop No.3, Ground Floor, Ishwardas Mansion Building, Nana Chowk, Grant Road (W), Mumbai - 400007. One Mr. A. R. Shah made a complaint to the Corporation that the Plaintiff carried out unauthorised construction in the suit premises. Hence, the Corporation issued a letter dated 07/04/2015 to the Plaintiff to remain present in a meeting to be held on 10/04/2015 to consider the complaint made by Mr. A.R.Shah. After hearing the complainant as well as the Plaintiff, the Corporation passed order dated 10/04/2015 bearing No.MDB/L/110/GRC/dated Nil/4/2015 directing the landlord to

submit his reply in respect of the unauthorised construction. Hence, the Plaintiff filed L.C.Suit No.5963/2015 in Bombay City Civil Court, Mumbai challenging the notice dated 07/04/2015 as well as the order passed by the Corporation dated Nil/04/2015. Following are the prayers in the plaint.

a) That this Hon'ble Court be pleased to order and declare that the said notice bearing No.MDB/L/110/GRC/dated 07/4/2015 being Exhibit- "GG" hereto and the order passed thereon bearing No.MDB/L/110/GRC dated Nil/4/2015 being Exhibit- "PP" issued and passed by the learned Dy. Municipal Commissioner in respect of the doors of the said Room No.3, Ground Floor, Ishwardas Mansion Building, Nana Chowk, Grant Road (W), Mumbai – 400007 and more particularly shown in the photographs being Exhibit - "TT" collectively, hereto are illegal and bad-in-law and liable to be quashed and set aside by the orders of this Hon'ble Court.

b) That this Hon'ble Court be pleased to order and declare that the Defendants, their agents, servants, persons, officer or officers, representative or representatives claiming through or under them be legally estopped

3. The Plaintiff preferred draft Notice of Motion for interim relief which was rejected by the Trial Court. The operative part of the order passed by the Trial Court reads thus:

ORDER

- “1. Leave granted to register draft Notice of Motion.
2. The Defendant shall file reply to the Notice of Motion till next date.

Adjourned to 11/06/2015 for tendering Notice of Motion and reply. “

Hence, the present Appeal from Order.

4. The learned counsel for the Appellant/ Plaintiff submits that the Respondent Corporation, with mala fide intention took action against the Plaintiff on the basis of false complaint dated 05/02/2015 filed by Mr. A.R.Shah. He submits that though the Plaintiff applied to the Corporation for certified copies of the sanctioned plan, same was not provided by them. Hence, the notice dated 07/04/2015 as well as the order dated Nil/04/2015 to be stayed till hearing and final disposal of the Notice of Motion.

5. It is to be noted that in the present proceedings, notice dated 07/04/2015 was issued to the Plaintiff directing him to remain present for hearing on 10/04/2015. That meeting is over. Same was attended by the Plaintiff. Therefore, there is no question of staying the effect of the said notice.

6. The order dated Nil/04/2015 passed by the Corporation is against the landlord. The landlord has not challenged the said order either before the Trial Court or this court. Hence, there is no question of entertaining the present Appeal from Order.

7. The Trial Court permitted the Corporation to file an Affidavit-in-Reply to the Notice of Motion. The said Notice of Motion is pending for final disposal on merits. Considering these facts, I do not find any reason to entertain the present Appeal from Order. Same stands rejected.

8. In view thereof, the Civil Application stands dismissed as infructuous.

(K.K. TATED, J.)