

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.881 OF 2014
IN
APPEAL FROM ORDER NO.729 OF 2014

Shri Yusuf Gohar Khan ... Appellant /
Plaintiff

Vs.

The Municipal Corporation of Greater
Mumbai & Ors. ... Respondents /
Defendants

Anushak Dawar, Adv. i/b. Parag Shah, Adv. a/w. Seema Navale, Adv.
for appellant.

A V Diwate, Adv. for respondent No.1.

G H Keluskar, Adv. for respondent Nos.2, 4 and 7.

CORAM : MRS. ROSHAN DALVI, J.

DATE : 28th October, 2015.

P.C. :

1. Rule. Made returnable forthwith.
2. The appellant has challenged the ad interim order of the Bombay City Civil Court in Chamber Summons taken out by the appellant for amendment of the plaint by tendering certain further documents in the suit and for injunction against demolition of the suit property.
3. The appellant applied for relief of protection upon filing the suit in 2010. The relief was refused. The High Court as also Supreme Court refused the relief in appeal. The Supreme Court has only clarified that the suit notice did not relate to shop No.3. The Supreme Court granted no relief in respect of shop No.3 and, for that matter shop No.4, where the appellant is shown to be the owner.
4. The notice under Section 351 is for a large horizontal structure consisting of various shops. The notice shows “unauthorised constructions of shops”. For protection of those shops the plaintiff

must produce documents of those shops. They having not been produced ad interim and interim reliefs have been refused.

5. In the impugned order also the ad interim relief is refused and there is observation of the Court that it was third round for the same relief. Counsel on behalf of the appellant, upon taking instructions from the appellant who is present in Court, also cannot show any new further documents which would prima facie show the construction of the suit structure prior to 1961 as claimed by the appellant.

6. The impugned order is only ad interim order. The Chamber Summons would be considered on its merits at the final hearing of the Chamber Summons. The impugned order cannot be faulted.

7. Since there has been no relief of protection the respondent MMC has demolished the suit structure. The photograph of demolition is shown. The photographs show the entire structure of ground plus mezzanine floor having been demolished. Only one part of the structure which is near a ladder is yet not demolished.

8. This observation is only made to put on record what has transpired. It is clarified that there is no order against demolition of the remainder of the structure. One photograph signed by the appellant before the Court showing the demolished structure is taken on record.

9. Appeal from Order as also Civil Application are disposed of accordingly.

(ROSHAN DALVI, J.)