

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**FIRST APPEAL NO. 947 OF 2015
WITH
CIVIL APPLICATION NO. 2661 OF 2015 IN F.A. NO. 947 OF 2015**

Jawaharlal Bharatraj Pasi ... Appellant/Applicant
vs.
The Municipal Corporation of Greater
Mumbai & Ors. ... Respondents

Mr. Rajendra K. Yadav, Advocate for the appellant/applicant.
Mrs. M.R. Bhoir, Advocate for the respondent.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE : **AUGUST 28, 2015**

P.C.:

Admit. By consent, the Appeal is heard finally and disposed of at the stage of admission.

2. This Appeal is directed against the judgment and order dated 23rd March, 2015 passed by the learned Judge, City Civil Court, Mumbai thereby dismissing the Suit No.1112 of 2009. The suit was filed for declaration that the notice issued under Slum Rehabilitation Act on 14th May, 2009 is bad in law, malafide and injunction is to be issued restraining the defendants from demolition of the suit structure without following due process of law

3. The learned counsel for the appellant submitted that the learned trial Judge did not consider the payment of rent made by the appellant

from January, 1995 to March 2003. He further submitted that learned trial Judge ought to have considered this document properly and has also failed to appreciate the other documents and erred in holding that the suit structure is unauthorized.

4. The learned counsel for the respondent/corporation relied on the written statements filed by the respondents wherein it was mentioned that rent book from which the rent receipt was issued was cancelled after obtaining sanction from DMC (Z-1) under order dated 26th December, 2008. All the documents submitted by the appellant showing that the structure existed prior to 1995 were considered and found that the appellant/plaintiff could not prove that the suit structure was in existence prior to 01.01.1995.

5. Perused the judgment and order passed by the learned trial Judge, written statement and evidence recorded in the suit. The receipt dated 14th January, 2003 discloses that the officer of the Corporation has accepted the rent from January, 1995 to March, 2003 of Rs.3,936/- in respect of suit structure. However, as this rent book itself was declared as cancelled, it has no value. Moreover, payment of rent itself cannot confirm that at the relevant time, the structure was in existence. The rent can be collected by the Rent Collection Department without ascertaining the fact whether suit structure did exist on 01.01.1995 or not. The

reasoning given by the trial Court is found correct. Under such circumstances, the First Appeal is dismissed.

6. In view of dismissal of First Appeal, Civil Application does not survive and hence, the same is accordingly disposed of.

(MRS.MRIDULA BHATKAR, J.)