

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

APPEAL FROM ORDER NO.980 OF 2014

Smt. Nazmabi Khaliq Shaikh

... Appellant

V/s.

MHADA & Ors.

...Respondents

Mr. M. Shetty for the Appellant.

CORAM: K.K. TATED, J.
DATED : JANUARY 19, 2015

PC. :

1. Heard the learned counsel for the Appellant. This Appeal from Order is filed by the original Plaintiff challenging the order dated 01/07/2014 passed by the Bombay City Civil Court, Mumbai in Notice of Motion No.3807/2013 rejecting the Appellant's prayer for restraining Respondent No.6 from carrying out any development activities on the suit property without making any provision for an alternate accommodation for the Appellant in the similar location as occupied in the old building as directed by order dated 15/09/2011 in Notice of Motion No.1658/2011.

2. It is the case of the Appellant that thereafter, he obtained sanctioned plain under the Right to Information Act. As per his contention, Respondent No.6 started construction activity without making any provision for alternate accommodation to the Plaintiff as

per earlier order dated 15/09/2011. Hence, the Appellant preferred the present Notice of Motion No.3807/2013 for an order of injunction restraining Respondent No.6 from carrying out any construction activities. It is the case of the Appellant that Respondent No.6 started construction activity on the suit land. He further submits that even in the sanctioned plan which he obtained under the Right to Information Act, an alternate accommodation is not shown, as per order dated 15/09/2011. Hence, the Trial Court erred in rejecting the Appellant's Notice of Motion.

3. It is to be noted that in the present proceedings, the Respondent No.6 - Defendant No.6 filed their Affidavit-in-Reply in Notice of Motion No.3807/2013. In the said Notice of Motion, the Respondent No.6 specifically stated in paragraph 9 that the order passed by the Bombay City Civil Court, Mumbai in Notice of Motion No.1658/2011 dated 15/09/2011 is binding on them. Paragraph 9 of the said Affidavit-in-Reply reads thus:

“ With reference to para 1 & 2 of the alleged Notice of Motion the Defendant No.6 strictly denies that as per the Plaintiffs inspected the plan under RTI perused that no provision is made for any alternate accommodation in lieu of the suit premises as falsely alleged. It is further submitted that the Plaintiff is making the false and vague submissions against the Defendant No.6 and further put the Plaintiff to the strict proof thereof. It is further submitted that the Defendant No.6 are binding the orders and/or directions of this Hon'ble Court and therefore making such type of mischievous allegations the Plaintiff will not suffice his fabricated claim and on this ground itself this present Notice of Motion is liable to be dismissed and should be dismissed with the compensatory cost.”

4. Even these facts are considered by the Trial Court in paragraph 6 and held that the Appellant's rights are already protected by earlier order dated 15/09/2011. Hence, there is no question of restraining the Respondents from carrying out any construction activity on the suit land.

5. Considering the fact that the Respondent No.6 - Defendant No.6 specifically stated in their Affidavit-in-Reply that the earlier order dated 15/09/2011 is binding on them, I do not find any reason to interfere with the well reasoned impugned order dated 01/07/2014 passed in Notice of Motion No.3807/2013. Hence, the Appeal from Order stands rejected.

6. Liberty granted to the Appellant to prefer appropriate proceedings in case the Respondent failed and neglected to reserve a shop for him, as per order dated 15/09/2011 in Notice of Motion No.1658/2011.

(K.K. TATED, J.)