

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

**APPEAL FROM ORDER (ST) NO.22352 OF 2015
IN
NOTICE OF MOTION NO.2966 OF 2015
IN
THE BOMBAY CITY CIVIL COURT LONG CAUSE SUIT NO.1329 OF 2015
WITH
CIVIL APPLICATION (ST) NO.22354 OF 2015**

Ramdas Sheshgiri Pai & Anr. ... Appellants
versus
The Mumbai Municipal Corporation and Ors. ... Respondents

Mr. Rajendra K. Yadav, for Appellants.
Mr. A.V.Diwale, for the Respondents.

CORAM: S.J. KATHAWALLA, J.

DATE: 9th SEPTEMBER, 2015

PC.:

1. Rule. By consent of the parties, rule is made returnable forthwith and the above Appeal from Order is taken up for final hearing.

2. The above Appeal is filed against the order dated 17th July, 2015 passed by the learned Judge of the City Civil Court at Bombay, rejecting the Application of the Plaintiffs seeking ad-interim relief in terms of prayer clause (b) of the Notice of Motion, which is reproduced hereunder :

(b) that pending the hearing and final disposal of the above suit, the Defendants, their agents, servants, persons, officers, representatives claiming through or under them be restrained

by an order and temporary injunction of this Hon'ble Court from in any manner **conducting any inquiry** in pursuance of the said Show Cause Notice bearing No.D.O.II/ (AEBF-D Ward / D -1952/351/00838/213/ dated 02-07-2015 under Section 351 of the Mumbai Municipal Corporation Act, 1888 issued to the Plaintiff No.2 in respect of the doors of the said Room No.3, Ground Floor, Ishwardas Mansion Building, Nana Chowk, Grant Road (W), Mumbai – 400 007;

2. That the Appellants/Plaintiffs have sought ad-interim relief in terms of prayer clause (b) before the City Civil Court is clear from prayer clause (c) of the Notice of Motion, which reads thus :

“for ad-interim and Interim reliefs in terms of prayer clause (b) above be granted to the Plaintiffs;

3. However, the learned Judge in paragraph No.1 of the impugned order, has stated that *“This draft Notice of Motion is taken out by Plaintiff for Ad-interim relief in terms of prayer clause (a) i.e. injunction restraining defendant from taking any action or demolishing structure situated in the suit premises”*.

4. The learned Judge has thereafter, proceeded to reject the prayer clause (a) for reasons set out in paragraph No.2. The Plaintiffs have not prayed for the relief as set out in the impugned order either in prayer clause (a) or (b)

of the Notice of Motion. In view thereof, the order passed by the Learned Judge deserves to be set aside. Accordingly the impugned order dated 17th July, 2015 passed by the learned Judge is set aside with liberty to the Appellants/Plaintiffs to move a fresh Application for ad-interim relief/s before the Learned Judge of the City Civil Court, Mumbai. In the event of such Application being made, the same shall be decided by the learned Judge on its own merits. The above Appeal from Order as well as Company Application (ST) No.22354 of 2015 stand disposed off.

(S.J.KATHAWALLA, J.)

Certified to be true and correct copy of the original signed order.