

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION (ST) NO.24564 OF 2015
IN
APPEAL FROM ORDER (ST) NO.24562 OF 2015

Mr. Vijay Bhau Chalke	...	Appellant
Vs.		
The Municipal Corp. of Gr. Mumbai & Ors.	...	Respondents

Jagdish N Jayale, Adv. for appellant.
Mr. A V Diwate, Adv. for respondent for MMC.

CORAM : MRS. ROSHAN DALVI, J.
DATE : 7th September, 2015.

P.C. :

1. Not on board. Upon production, taken on board.
2. Rule. Returnable forthwith.
3. The appellant, who was the plaintiff in the trial court, has challenged the order of the Bombay City Civil Court dated 3rd September, 2015 refusing ad interim injunction on the ground that the plaintiff has not produced any documents more specially the permission to construct the suit structure.
4. It has not been the appellant's case that suit structure has been constructed under a sanctioned plan. It has been the appellant's case that the suit structure was in existence since 1962 and is, therefore, tolerable. The appellant has produced various documents of earlier years to prima facie show the existence of the structure since

that time. It is seen that the structure was earlier tenanted to one Kashikar who assigned it to one Garud who assigned it to the plaintiff. Kashikar assigned it in 1969 to Garud. Garud has obtained registered certificate under shops and establishment Act, 1968. Hence Garud could have been in possession prior to 1969 and even some time prior to 1968.

5. The appellant, who was sued in the Small Causes Court by the landlord, has inter alia produced a rent receipt in the name of earliest tenant Kashikar of 1976.

6. The appellant has relied upon and produced one agreement dated 19th March, 1981 between the landlords and the developers Rizvi Estates & Hotels P. Ltd. The agreement shows certain tenants against whom the suits are filed. The agreement also shows one James Misaqitta who was running garage upon making encroachments. The agreement shows the schedule of the tenants including the appellant's predecessor-in-title for Garage No.6. The first schedule to the agreement shows the assessment bills under 'K' Ward bearing No.7919 (1 to 4) and 7920 (1 to 4). The appellant cannot produce the assessment bills. Those would have to be produced by the landlords or by the municipality who has issued them. These aspects can be considered in the Notice of Motion.

7. The appellant has prima facie shows the existence of the suit structure at least since 1968. It is, therefore, an old structure. Further evidence to conclusively show the existence of the structure would be the assessment record.

8. Under these circumstances and upon such documents the impugned order showing that the appellant has not produced any document may appear to be incorrect.

9. Counsel on behalf of the MMC states that it was the case of the MMC that documents showing the existence of the structure as required were not produced and hence MMC's demolition order came to be passed. However, since the appellant has produced documents from 1968 it would be in accordance with the interest of justice that this Notice of Motion is seen on merits. The appellant shall apply before the MMC for the assessment record of the structure in 'K' Ward Nos.7919 (1 to 4) and 7920 (1 to 4). The municipality may produce the suit records. The learned Judge shall consider that record as also any record prior to 1968 if produced by the appellant to see whether the suit structure is tolerable or not.

10. Consequently impugned order dated 3rd September, 2015 is set aside. There shall be an injunction against the Mumbai Municipal Corporation restraining MMC from demolishing the appellant's structure pending the Notice of Motion in the trial Court.

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

(ROSHAN DALVI, J.)

C E R T I F I C A T E

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