

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.704 OF 2013

Dilipkumar Mukteshwar Singh ... Applicant
Vs.
Thane Municipal Corporation and another ... Respondents

Mr. R. B. Singh i/b. R. B. Singh & Associates for Applicant.
Mr. Mandar Limaye for Respondent No.1 Corporation.

CORAM : R. G. KETKAR, J.
DATE : 6TH JULY, 2015

P.C. :

Heard Mr. Singh, learned Counsel for applicant and Mr. Limaye, learned Counsel for respondent No.1.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908, applicant – original plaintiff has challenged the judgment and order dated 19.08.2013 passed by the learned District Judge-10, Thane in Miscellaneous Civil Appeal No.39 of 2013. By that order, the learned District Judge allowed the Appeal preferred by the respondent No.1 herein, hereinafter referred to as the defendant No.1 and quashed and set aside the judgment and order dated 01.01.2013 passed by the learned 5th Joint Civil Judge, Senior Division, Thane below exhibit-5 in Special Civil Suit No.388 of 2012. The learned District Judge dismissed the application filed by the plaintiff for temporary injunction restraining the defendant No.1 from implementing the notice dated 09.05.2012 issued under Section 260(1)(2) as also the notice dated 31.05.2012 issued under Section 267 of the Maharashtra Municipal Corporations Act (for short 'Act').

3. The learned trial Judge while allowing the application exhibit-5 held that the documents produced by the plaintiff prima facie discloses

that the construction of the suit flat is legal and authorised. The notice under Section 260 does not disclose or specify the description of the unauthorised construction. The notice is vague as regards description of the unauthorized construction.

4. Mr. Limaye, upon taking instructions from Mr. Maruti P. Gaikwad, Assistant Commissioner, Thane Municipal Corporation, who is present in the Court, states that defendant No.1 Corporation will withdraw notice dated 09.05.2012 issued under Section 260(1)(2) as also the notice dated 31.05.2012 issued under Section 267 of the Act reserving liberty to issue fresh show cause notice. He submits that since the Suit instituted by the plaintiff challenges the said notices, in view of the withdrawal of the notices, the Suit will not survive and the same may be disposed of as infructuous. Mr. Singh states that he has no objection and he will move the trial Court for withdrawal of the Suit.

5. In view thereof, C.R.A. is disposed of in the following terms:

- (a) Notice dated 09.05.2012 issued under Section 260(1)(2) as also the notice dated 31.05.2012 issued under Section 267 of the Act are allowed to be withdrawn with liberty to the defendant No.1 Corporation to issue fresh notice;
- (b) In view of the withdrawal of the Notices, Special Civil Suit No.388 of 2012 does not survive and the same is disposed of as infructuous;
- (c) Plaintiff shall produce authenticated copy of this order before the trial Court for formal withdrawal of the Suit;
- (d) Refund of the Court fees as per Rules;
- (e) Order accordingly.

(R. G. KETKAR, J.)