

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.1032 OF 2014

Sangli, Miraj and Kupwad Municipal Corporation
through its Dy. Commissioner / Designated Officer ... Applicant
Vs.
Ramchandra Haribhau Savashe (decd) through
heir Sitabai R. Savashe and another ... Respondents

Mr. N. V. Walawalkar, Senior Advocate i/b. Mr. G. H. Keluskar for Applicant.

CORAM : R. G. KETKAR, J.
DATE : 10TH AUGUST, 2015

P.C. :

Heard Mr. Walawalkar, learned Senior Counsel for applicant at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), original defendant No.1 has challenged the judgment and order dated 22.07.2014 passed by the learned Civil Judge, Junior Division, Miraj below exhibit-20 in Regular Civil Suit No.243 of 2014. By that order, the learned trial Judge rejected the application taken out by the applicant, hereinafter referred to as the defendant No.1, under Order VII, Rule 11(d) of C.P.C. for rejection of the plaint on the ground that it is barred by Law.

3. In support of this Application, Mr. Walawalkar submitted that the City Engineer as also Branch Engineer submitted report dated 12.02.2014 to the Deputy Municipal Commissioner / Designated Authority indicating that the property in question is in a dilapidated condition, and therefore, steps are required to be taken under Section 264 of the Maharashtra Municipal Corporations Act (for short 'Act'). Accordingly, notice under Section 264(1) was issued on 26.05.2014 to the respondent No.1, hereinafter referred to as plaintiff. The plaintiff

has instituted Suit challenging the said notice in June 2014. In view of Section 433-A of the Act, Suit is clearly barred and Civil Court has no jurisdiction to entertain and try the Suit challenging the notice issued under Section 264 of the Act. He, therefore, submitted that the impugned order is liable to be set aside.

4. I have considered the submissions advanced by Mr. Walawalkar. I have also perused the material on record. In paragraph 4 of the Suit, plaintiff averred that respondent No.2, hereinafter referred to as the defendant No.2, was formerly Mayor and presently Sitting Councilor and group leader of the Defendant No.1. At his behest, the impugned notice is issued. In paragraph 22, the learned trial Judge, after perusing the notice, prima facie, observed that the notice does not indicate any specific portion and on the contrary, entire property is shown in a dilapidated condition. However, no notice was issued to either owner or other occupants. Mr. Walawalkar submitted that in fact, the notice is addressed to the plaintiff and other occupants. In paragraph 23, the learned trial Judge observed that the notice also does not disclose which part and how much area is in danger, and therefore at this juncture, inference cannot be drawn that the Suit is barred under Section 433-A of the Act.

5. In view of the assertions made in paragraph 4 of the Suit as also in view of the findings recorded by the learned trial Judge that the impugned notice issued is vague as it does not disclose which part and how much area is in danger, I do not find that the learned trial Judge has committed any error in rejecting the application. Hence, Petition fails and the same is dismissed. However, it is made clear that the learned trial Judge will decide the main Suit on the basis of the evidence on record and uninfluenced by the observations made in the impugned order as also in this order. Order accordingly.

(R. G. KETKAR, J.)