

vai

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (STAMP) NO.33705 OF 2015
WITH
CIVIL APPLICATION (STAMP) NO.33706 OF 2015

Shivani D. Birwatkar
V/s.

...Appellant

M.C.G.M.

...Respondent

Mr.Ajay Mishra for the Appellant.

Mr.A.V.Diwate for the Respondent – B.M.C.

CORAM : R.D. DHANUKA, J.
DATE : 23RD DECEMBER, 2015.

P.C. :-

1. The papers are allowed to be produced at 3:00 p.m. in view of urgency.
2. By this appeal from order, the appellant has impugned the order passed by the learned trial Judge refusing to grant ad-interim relief in the notice of motion filed by the appellant (original plaintiff) in which the appellant had prayed for temporary injunction against the Corporation from demolishing the suit premises or any part thereof. Mr.Mishra, learned counsel for the appellant submits that the suit structure has been given on license to the Canara Bank for using the said premises for ATM. Learned counsel however, is unable to

produce any document in support of the plea that the said extended portion was constructed after obtaining any prior permission of the Municipal Corporation.

3. The learned trial Judge in the impugned order has already clarified that the entire shop is not constructed unauthorizedly but only the additional construction of wall in the existing shop admeasuring 1.5 meter x 2.8 meter is unauthorized construction.

4. Learned counsel for the Municipal Corporation invited my attention to the order passed by the designated officer on 3rd October, 2015 and would submit that the designated officer has considered the documents produced by the appellant which documents would not prove that the suit structure was in existence prior to 1st April, 1962.

5. Though this Court has given an opportunity to the appellant to produce any document even before this Court to demonstrate that the suit structure was in existence prior to 1st April, 1962 or to produce a copy of the sanction granted by the Municipal Corporation for carrying out additional construction which is subject matter of notice issued notice section 351 of the Mumbai Municipal Corporation Act, the appellant has failed to produce any such documents.

6. In my view, the learned trial Judge was accordingly right in rejecting ad-interim relief in favour of the appellant. There is no

infirmity in the order passed by the learned trial Court. The appeal is devoid of merits and is accordingly dismissed.

7. In view of the dismissal of the appeal from order, the civil application does not survive and is accordingly disposed of. No order as to costs.

(R.D. DHANUKA, J.)