

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****APPEAL FROM ORDER (ST) NO. 216 OF 2016****ALONGWITH****CIVIL APPLICATION (ST) NO. 218 OF 2016****IN****APPEAL FROM ORDER (ST) NO. 216 OF 2016****Ajay Ramchandra Salgaonkar****..... Appellant****VERSUS****The Municipal Corporation of Gr.Mumbai****..... Respondent**

Mr.Suresh Gole for the Appellant.

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

Mr.Sachin Ganpat Khodade, Junior Engineer, Building Factory, 'E' Ward, Byculla present.

CORAM : R.D. DHANUKA, J.**DATED : 12th JANUARY, 2016****P.C.**

By this appeal from order, the appellant has impugned the order dated 18th December, 2015 passed by the learned trial judge refusing to grant ad-interim relief in the notice of motion filed by the appellant (original plaintiff) inter alia praying for an injunction restraining the Municipal Corporation from demolishing the suit premises being Shop No.7A consisting of ground plus mezzanine floor described in the plaint.

2. A perusal of the order passed by the learned trial judge indicates that the ad-interim relief is rejected on the ground that the structure in respect of which notice is issued by the Municipal Corporation is an independent structure whereas the appellant has produced documents in respect of another structure.

3. A perusal of the plaint indicates that the appellant has applied for injunction in respect of Shop No.7A. Mr.Gole, learned counsel appearing for the appellant states that though the notice issued by the Municipal Corporation under section 351 is vague, the said notice appears to be in respect of Shop No. 7A. Accordingly the appellant has prayed for injunction in respect of structure 7A.

4. In view of the fact that the notice issued by the Municipal Corporation does not refer to particular number of the structure and in view of the rival contentions raised by both the parties about the identity of the structure, it would be appropriate if the notice structure is protected till disposal of the notice of motion.

5. Municipal Corporation is directed to file affidavit in reply within four weeks from today to the notice of motion and shall serve a copy thereof upon the plaintiff's advocate simultaneously. Rejoinder if any, shall be filed within two weeks from the date of service of affidavit in reply. Learned trial judge shall dispose of the notice of motion without being influenced by the observations made in the impugned order and shall decide the same on its own merits. The learned trial judge shall make an endeavour to dispose of the notice of motion within six months from the date of completion of the pleadings by both the parties.

6. I, therefore, pass the following order :-

(a) There shall be ad-interim relief in terms of prayer clause
(b) of the notice of motion which shall be force till disposal of the notice of motion and for a period of two weeks thereafter.

(b) The appellants shall not create any further third party rights in respect of the suit property till disposal of the notice

of motion.

(c) If the appellant seeks to produce any additional documents by filing any additional affidavit, the same shall be served upon the Municipal Corporation in advance. The Municipal Corporation would be at liberty to file reply to the additional affidavit also before the learned trial judge.

(d) The learned trial judge shall consider the additional pleadings and documents also while disposing of the notice of motion.

7. Appeal from order is disposed of in the aforesaid terms. No order as to costs. In view of disposal of the appeal from order, civil application does not survive and is accordingly disposed of.

[R.D. DHANUKA, J.]