

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 93 OF 2015
ALONGWITH

CIVIL APPLICATION NO. 213 OF 2015
IN
FIRST APPEAL NO. 93 OF 2015

Pranjivan Chheda

....Appellant
(Orig. Plaintiff)

V/s.
The Municipal Corporation of
Greater Bombay & anr.

....Respondents
(Original Defendants)

* * * * *

Ms. Kavita A. Shah, Advocate for the appellant.

Mrs. M.R. Bhoir, Advocate for respondent no.1, BMC.

Mrs. Trupti P. Khanvadekar i/by. Mr. R.R. Arolkar, Advocate for respondent no.2.

Coram :- Smt. R.P. SondurBaldota, J.

5th May, 2016.

P.C. :-

1). This appeal is directed against the judgment and decree dated 23rd December, 2014 by which the Bombay City Civil Court dismissed the appellant's suit to challenge the notice issued by respondent no.1, Mumbai Municipal Corporation under Section 351 of the Mumbai Municipal Corporation Act. The appellant is occupier of Rooms no. 7, 8

and 9, Kings Quarter, Dadabhai Chamberbaugwala Road, Parel, Mumbai-400 012 and was served with notice under Section 351 of Mumbai Municipal Corporation Act calling upon him to show sufficient cause as to why the work of construction described therein should not be pulled down and or the change of user restored. The unauthorised construction described in the notice is “unauthorised construction of loft in Room No.7, 8 and 9 admeasuring 3.2m x 3.7m, 3.05 m x 6.9m and (4.8m x 3.7m + 4.55 x 2.05m) respectively, unauthorised construction of cabins in Room No.7 & 9, unauthorised change of user i.e. residential to commercial. Note :- (1) All dimension are in 'm' meter, (2)Sketch not to be scale. (3)unauthorised work shown in red”. The appellant replied the notice through advocate's letter dated 2nd July, 2010 and denied the allegations of unauthorised construction. In his reply, he claimed that the impugned notice wrongly described the premises as Rooms No.7, 8 and 9 and the correct description was shop No.7, 8 and 9. He denied that he had, constructed a cabin in Room No.7 and 9 or changed the user of the premises from residential to commercial. According to the appellant, he is in possession of Shop no.7B and one, M/s. Kesaria Trading Company, of which he is a partner, is in possession of Shops No.8 and 9. As regards the construction of lofts, the appellant claimed that the lofts in Room No.7B and 9 had been in existence since prior to the year 1961-62 and there is no loft in Room no.8. The cabin described as the unauthorised work in the notice was claimed to be a temporary cabin made of wood and hence does not fall within the definition of premises under the Mumbai Municipal Corporation Act (“the MMC Act” for short). He relied upon the assessment extract in respect of the rooms to establish his claim as regards the construction described in the impugned notice. He also contended that, the assessment of the

premises at commercial rate would mean that the change of user of the premises from residential to commercial has been accepted by respondent no.1. In the plaint, the additional allegations made by the appellant are that the notice had been issued malafide on the complaint of respondent no.2.

2). Respondent no.1, Corporation contested the suit contending that the same was not maintainable for want of service of statutory notice. On merit, respondent no.1 alleged that it had received complaints from one Jitendra Vijay Mistry on 12th April, 2010 and from respondent no.2 on 8th June, 2010 about the unauthorised change of user from residential to commercial premises by the appellant. On receipt of the complaint, the officers of the respondent no.1 visited the premises on 15th April, 2010 and noticed the unauthorised construction in Rooms No.7, 8 and 9. Then, they made enquiries with the appellant about the authorisation of the structures. When the appellant failed to show any authorisation, the impugned notice under Section 351 of Mumbai Municipal Corporation Act, came to be issued to the appellant.

3). Respondent no.2 resisted the suit alleging that the appellant has suppressed material facts from the Court. It is his claim that, rooms no.8 and 9 have been wrongly described as shops no.8 and 9. The two rooms are infact used for residential purposes. He also claimed that, there is nothing like Room No.7B in the building. What has been described as Room No.7B by the appellant is a portion of Room No.7 which has been let out to the deceased father of respondent no.2. That portion was in occupation of the brother of respondent no.2 till June, 2000. In the month of June, 2000 the brother of respondent no.2 illegally inducted

the appellant in the said portion. Therefore, respondent no.2 had filed RAD Suit No. 1484 of 2000 in the Court of Small Causes at Mumbai against his brother, the appellant and the owners of the building, in which the rooms are situate. That suit was decreed in favour of respondent no.2 by the judgment and order dated 3rd and 4th April, 2008.

4). The appellant examined himself and one Chandresh Chheda in support of his case. Respondent no.1 examined its officer, Abhijeet Pawar. On appreciation of the evidence, the Bombay City Civil Court held that the appellant has failed to prove that the impugned notice is illegal and bad in law. It also held that, the suit filed without statutory notice under Section 527 of the MMC Act is not maintainable and the appellant is not entitled to any relief sought therein.

5). The appellant is a partner of M/s. Kesaria Trading Company which is a registered partnership firm and which carries on business of second hand imported glass bottles since the year 1986. He deposed that one Chandulal Mistry brother of respondent no.2 had transferred the rent receipt in respect of room no.7B in his favour in the year 2004. He did not dispute the proceedings filed by respondent no.2 in the Small Causes Court against him and the result of those proceedings. He, however, claimed that an application has been filed by him for setting aside the decree. The Bombay City Civil Court noted that, the appellant had fairly admitted that he had not taken any permission from Mumbai Municipal Corporation for making any of the alterations in the premises in question. He, merely claimed that the lofts had been in existence since prior to his acquisition of the suit premises. Even if this claim is to be accepted, which claim can only mean that the construction was not at the hands of the appellant, the same would not affect the nature of the

disputed construction as unauthorised construction. The appeal is dismissed.

6). With dismissal of the Appeal, the above Civil Application does not survive. The same is accordingly disposed off.

7). Ms. Shah, learned Advocate appearing for the appellant requests for continuation of the ad-interim order dated 20th January, 2015 for a period of 8 weeks from today. The application is opposed by the respondents. Considering the fact that the interim protection has been running through the pendency of the suit and from filing of the present appeal in the year 2015, the same is continued for a period of 8 weeks from today.

(SMT. R.P. SONDURBALDOTA, J)