

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

***APPEAL FROM ORDER NO. 142 OF 2015
ALONG WITH
CIVIL APPLICATION NO. 344 OF 2015***

Sangeeta Popat Gund & anr.

... Appellants/
Applicants

v/s

The Designated Officer-II,
Asstt. Engineer (B and F) & anr.

... Respondents

***AND
CIVIL APPLICATION NO. 760 OF 2015
IN
APPEAL FROM ORDER NO. 142 OF 2015***

M/s.Shiv Enterprises

... Applicant/
Intervenor

v/s

Sangeeta Popat Gund & anr.

... Respondents
(Ori. Applicants)

Ms.Vandana Santara for the Appellant in A.O. No.142 of 2015 and
applicant in CAA No.344 of 2015.

Mr.Mohit Jadhav i/by Shailesh Rai for the applicant in CAA No.760
of 2015.

Mr.A.V. Diwate for the respondent B.M.C.

***CORAM: N.M. JAMDAR, J.
DATED : 21 MARCH 2016***

PC.:

By this appeal, the Appellant challenges the order passed by the City Civil Court, Mumbai, dated 30 January 2015 refusing to grant ad-interim relief to the Appellants in Draft Notice of Motion of 2015.

2 In the L.C. Suit No.236 of 2015, the Appellants challenge the notice dated 4 December 2014 under Section 351 of Mumbai Municipal Corporation Act, and the order passed therein on 22 January 2015. The City Civil Court refused to grant ad-interim order since the appellants did not produce any slum notification neither could show existence of the structure prior to the datum line of 17 April 1964.

3 The appeal was taken at 4.30 p.m. in chamber on 31 January 2015 upon mentioning by the Appellants, stating that reasoned order is not ready. The counsel for the Appellants had also taken time to produce certain documents. On this basis the ad-interim relief was granted. Thereafter the matter has come up on board today. Learned counsel for the Municipal Corporation makes a grievance that complete copy of the reasoned order is not served till today even though amendment is carried out in the appeal.

4 Heard learned counsel for the parties.

5 Learned counsel for the Appellants submitted that, as on date, the Appellants do not have any document to show that the structure was in existence prior to the datum line of 17 April 1964,

however, contends that the record is available with the landlord. She has also placed on record copy of the judgment of the City Civil Court, Dindoshi, in L.C. Suit No.476 of 2009 contending that there is a reference to the proceedings filed by Shree Ganesh Welfare Association i.e. S.C.Suit No.3006 of 1992. However, nothing further turns on this submission, as what is placed on record is L.C. Suit No. 476 of 2009 filed by one Anil Pancham Singh Chauhan, who had challenged the notice issued to him regarding rolling shutter. The City Civil Court came to the conclusion that, that a rolling shutter cannot be considered as a construction and the notice under Section 351 of the Mumbai Municipal Corporation Act issued to the Plaintiffs therein was not correct. This does not advance the case of the Appellants at all. The Appellants do not have any document whatsoever to show that the structure is protected. In view of the amendment to the Municipal Corporation Act and incorporation of Section 515-A, the scope of the civil suit is extremely limited. Furthermore, there is no perversity in the order passed by the City Civil Court refusing to grant ad-interim relief in absence of any document. The appeal, therefore, cannot be entertained and is accordingly dismissed.

6 In view of dismissal of the appeal, the civil applications do not survive and are disposed of.

(N. M. JAMDAR, J.)