

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

**SECOND APPEAL NO.152 OF 2011
along with
CIVIL APPLICATION NO.376 OF 2011**

Anil Trilokchand Grover .. Appellant/Applicant
Vs.
The Commissioner
Navi Mumbai Mahanagarpalika & Ors. .. Respondents

Mr.B.F.Raje for the Appellant/Applicant.
Mr.A.A.Garge for the Respondent Nos.1 to 3.
Mr.G.S. Hegde i/by M/s.G.S. Hegde and Associates for the Respondent No.4.

CORAM : R.D. DHANUKA, J.
DATE : 13th December 2016

P.C.

. By this appeal filed under Section 100 of the Code of Civil Procedure, 1908, the appellant (original plaintiff) has impugned the judgment and decree dated 1st October 2010 passed by the learned District Judge-4, Thane dismissing the Civil Appeal No.171 of 2007 filed by the appellant. In the said appeal, the appellant had impugned the judgment and decree dated 16th November 2007 passed by the learned trial Judge dismissing the suit filed by the appellant (original plaintiff) inter alia praying for injunction and challenging the two notices issued by the respondents.

2. The appellant had derived rights in the suit plot bearing no.76, Sector 8, Vashi, Navi Mumbai from City and Industrial Development Corporation of Maharashtra (CIDCO) by virtue of lease agreement dated 26th December 1978. The appellant had applied for

permission to the Town Planning Officer for development of the said suit plot. The CIDCO accordingly approved the plan and issued commencement certificate. The CIDCO had been supplying the water to the suit land since prior to October 1984 and thereafter the water supply was provided by the Maharashtra Water Sewerage Board.

3. It is not in dispute that the appellant had been paying the water charges to the CIDCO at the commercial rate but by virtue of agreement between CIDCO and Navi Mumbai Municipal Corporation, the water supply in the city of Navi Mumbai was handed over to the Navi Mumbai Mahanagar Palika (for short “the said Corporation”) with effect from November 1999. From the date of such agreement between CIDCO and the Corporation, the appellant started paying the water charges at commercial rate to the Corporation and paid the said amount till March 2000. Since the appellant did not pay the amount for the subsequent period, the Corporation issued two notices for arrears of payment of water charges.

4. The first bill was issued on 22nd June 2000 and the second bill was issued on 16th August 2000 demanding various amounts. The Corporation threatened the appellant for disconnection of the water supply in view of the default committed by the appellant in making the payment of water charges. On 25th August 2000, the appellant filed a suit in the Court of Civil Judge, Junior Division, Vashi in Regular Civil Suit No.135 of 2000 inter alia praying for a declaration that two bills dated 22nd June 2000 and 16th August 2000 and two notices dated 7th July 2000 and 16th August 2000 be declared as null and void. The said

Corporation filed a written statement resisting the suit. The CIDCO did not file any written statement.

5. The appellant as well as the said Corporation and CIDCO examined the witnesses. The learned trial Judge passed a judgment and decree on 16th November 2007 dismissing the civil suit filed by the appellant.

6. Being aggrieved by the said judgment and decree passed by the learned trial Judge, the appellant preferred an appeal (Regular Civil Appeal No.171 of 2007) before the learned District Judge-4, Thane. The learned District Judge formulated six points for determination and after considering the oral and documentary evidence and after considering the findings rendered by the learned trial Judge dismissed the appeal itself for want of notice under Section 487 of the Bombay Provincial Municipal Corporations Act, 1949 (for short "BPMC Act). The said judgment and decree is impugned by the appellant in this second appeal filed under Section 100 of the Code of Civil Procedure, 1908.

7. Mr.Raje, learned counsel appearing for the appellant invited my attention to the averments made in the plaint and also to the averments made by the respondent no.1 in the written statement. He submits that though no written statement was filed by the CIDCO, CIDCO had examined a witness who could not have been examined as a witness.

8. It is submitted that in view of extreme urgency and in view of threat of disconnection of water supply by the Corporation, the

appellant could not issue notice to the respondents under Section 487 of the BPMC Act and thus the learned trial Judge as well as the first appellate Court could not have dismissed the suit and the appeal respectively for want of notice before filing the said suit. It is submitted by the learned counsel that admittedly the application for occupation certificate filed by the appellant before the authority is pending. He submits that after construction of the residential premises, the appellant has been using the said premises for residential purpose and since the application for occupation certificate was pending, the CIDCO as well as the Corporation could not have charged the appellant at commercial rate.

9. It is submitted by the learned counsel that the appellant is ready and willing to pay charges of the water supply and other charges levied by the said Corporation and the CIDCO provided an occupation certificate is granted by the CIDCO and/or the Corporation.

10. Mr.Hegde, learned counsel appearing for the CIDCO, on the other hand, invited my attention to the averments made in the plaint. He submits that admittedly the first bill was issued by the Corporation on 22nd June 2000 and the second bill was issued on 16th August 2000. He submits that the suit was however filed on 25th August 2000. He submits that the appellant had thus sufficient time to issue notice under Section 487 of the BPMC Act and thus the first appellate Court has rightly dismissed the appeal on the ground of non issuance of mandatory notice under Section 487 of the BPMC Act.

11. In so far as the submission of the learned counsel for the appellant that the CIDCO had not filed any written statement and thus

no witness could have been examined by the CIDCO is concerned, he submitted that various documents were already on record before the learned trial Judge as well as the first appellate Court showing the arrears of various amounts. No objection was raised by the appellant when the witness was examined by the CIDCO. Learned counsel also invited my attention to various admissions made on behalf of the witness examined by the appellant. He submits that the appellant cross-examined the witness examined by the CIDCO. It is submitted by the learned counsel that the correctness of the charges levied by the CIDCO as well as the said Corporation in the bills have been proved beyond reasonable doubt before the learned trial Judge. There was no challenge to the amounts claimed by the CIDCO as well as the Corporation. He submits that the findings of the two Courts below are concurrent findings and being not perverse cannot be interfered with by this Court under Section 100 of the Code of Civil Procedure, 1908.

12. Mr.Garge, learned counsel appearing for Navi Mumbai Mahanagarpalika, on the other hand, invited my attention to the affidavit of evidence filed by his client and also to the averments made in the plaint. He also adopts the submissions made by Mr.Hegde, learned counsel for the CIDCO. He submits that no interference with the judgments and decrees passed by the two Courts below is warranted.

13. In so far as the first submission of the learned counsel for the appellant that there was extreme urgency and in view of threat of disconnection of water supply, the appellant was not in a position to issue any notice under Section 487 of the BMC Act is concerned, a perusal of the record indicates that the first bill was issued by the

Corporation on 22nd June 2000 and the second bill was issued on 16th August 2000. The first notice was issued on 7th July 2000 and the second notice was issued on 16th August 2000. In my view, if according to the appellant, the bill dated 22nd June 2000 itself was disputed and the notice dated 7th July 2000 itself was illegal, the appellant had sufficient time to issue notice under Section 487 of the BPMC Act, however the appellant filed the suit without notice only on 25th August 2000.

14. A perusal of the impugned judgment and decree dated 1st October 2010 passed by the first appellate Court indicates that the learned District Judge has rendered a finding that the appellant has failed to prove that the action of the Corporation was illegal, bad in law and void ab initio. In my view, in these circumstances, both the Courts are right in holding that the suit as well as the appeal was dismissed for want of statutory notice under Section 487 of the BPMC Act.

15. In so far as the second submission of the learned counsel for the appellant that the CIDCO could not have examined the witness in view of the CIDCO not having filed written statement and thus his evidence could not have been considered by the two Courts below is concerned, it is true that the CIDCO did not file any written statement. The issue however before the two Courts below was whether the bills issued by the Corporation and followed by the notices were correctly issued or not. The fact remains that when CIDCO examined the witness, no objection was raised by the appellant on the evidence led by the witness examined by the CIDCO. The appellant on the contrary cross-examined the witness examined by the CIDCO. In my view, there is thus no substance in this submission of the learned counsel for the appellant.

Both the Courts have decided against the appellant not only on the basis of the evidence led by the CIDCO.

16. In so far as the submission of the learned counsel for the appellant that the application for occupation certificate was pending and the appellant after construction of the building was using the premises for residential purpose and thus no commercial rate could be levied by the Corporation and the CIDCO is concerned, in my view, there is no substance in this submission of the learned counsel for the appellant. The appellant could not dispute before this Court that during the course of construction on the suit plot, the CIDCO was already charging the appellant for water supply at commercial rate which was being paid by the appellant. After the agreement was entered into between the CIDCO and the Corporation, the appellant continued to pay the water charges at commercial rate. The witness examined by the appellant in his cross-examination has admitted that when the appellant occupied the property for residence, the appellant had not applied for occupation certificate. The learned counsel appearing for the appellant also stated before this Court that the appellant was ready and willing to pay charges of the water supply at commercial rate as demanded by the CIDCO as well as the Corporation. His grievance however is that if the occupation certificate is granted by the Corporation, he will pay the amount.

17. In so far as issuance of occupation certificate is concerned, the said issue is not the subject matter of this appeal. The appellant can address this Court about occupation certificate in the second matter which is filed by the appellant which is on board today. A perusal of the

impugned judgment and decree passed by the first appellate Court clearly indicates that the first appellate Court has independently considered the evidence led by both the parties. The first appellate Court has also considered various admissions made by the witness examined by the appellant in the impugned judgment and decree and also considered the evidence led by the witness examined by the Corporation as well as the CIDCO.

18. A perusal of the cross-examination of the witness examined by the CIDCO and the said Corporation clearly indicates that the CIDCO has proved the correctness and authenticity of the bills issued to the appellant. Both the Courts have accordingly rightly accepted the correctness of the bills and notices issued by the respondents. In my view, the findings of facts recorded by the two Courts below being concurrent and not being perverse cannot be interfered with by this Court under Section 100 of the Code of Civil Procedure, 1908.

19. The appeal is devoid of merit. No substantial question of law arises in this second appeal. Both the judgments and decrees passed by the two Courts below are well reasoned judgments and decrees. I do not find any infirmity with the findings rendered by the two Courts below. At this stage, the learned counsel for the appellant, on instructions, states that his client is ready to pay the balance amount as set out in the civil application filed by CIDCO after adjusting the amount paid under interim order passed by this Court without prejudice to the rights and contentions of the appellant. Statement is accepted.

20. Second appeal is accordingly dismissed. In view of dismissal of the second appeal, civil application does not survive and is accordingly dismissed. No order as to costs.

R.D. DHANUKA, J.