

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 340 OF 2015
WITH
CIVIL APPLICATION NO.429 OF 2015**

M/s. Assam Forest Products Pvt Ltd. ..Appellant

Vs.

Brihanmumbai Mahanagar Palika ..Respondent

Mr. G. V. Murti a/w Mr. Mohun Rao i/b MSR & Associates for the Appellant

Mr. S. K. Sonanwane a/w Mrs. M. R. Bhoir for the Respondent

CORAM : R. M. SAVANT, J.

DATE : 20th JUNE, 2016

P.C.

1 The above Appeal from Order takes exception to the order dated 21-2-2015 passed by the Learned Judge of the City Civil Court, Greater Mumbai. The Appellant is the original Plaintiff who has filed the Suit in question being L.C. Suit No.482 of 2015. The said notice has been succeeded by the order dated 10-2-2015 passed by the Designated Officer of the Municipal Corporation of Greater Mumbai (MCGM). However, it is the grievance of the Plaintiff that the said Designated Officer has not taken into consideration the documents produced by the Plaintiff.

2 The Plaintiff in the said Suit moved the instant draft Notice of

Motion for ad-interim reliefs. The MCGM who is the Defendant in the said Suit did not file any reply but produced documents on the basis of which the Trial Court observed that prima facie the documents disclose that no permission was granted to the said structure. The offending structure is the mezzanine floor allegedly put up by the Plaintiff within the office premises. However, the Trial Court has observed that before passing any order of ad-interim relief the reply of the Defendant should be on record meaning thereby the Plaintiff's prayer for ad-interim relief can be considered only after the reply is filed by the Defendant-MCGM. However, the Trial Court thereafter observed that no case for urgency has been made out and the ad-interim reliefs have been rejected. However, the Defendant has been directed to file a reply by the next date. It is the case of the Plaintiff that it is in occupation of the said premises as the tenant of one M/s J.B.Advani & Co. who is the successor of Radia Sons Pvt Ltd. who was the earlier landlord. It is also the case of the Plaintiff that the building has been inspected by the MCGM and as per the inspection extract it appears that the structure is in existence from the year 1971-1972.

3 Be that as it may, since the Trial Court deemed it appropriate to observe that the application for ad-interim relief could be considered only after the reply was filed by the Defendant-MCGM, in my view, the Trial Court ought not to have rejected the application for ad-interim relief but ought to have granted ad-interim reliefs and directed the reply to be filed within a particular

time frame and also disposed of the Notice of Motion within a particular time frame. In my view, the ends of justice would be met if the following directions are issued:

(i) The Defendant-MCGM to file its reply to the Notice of Motion within two weeks from date.

(ii) Rejoinder if any to be filed within two weeks thereafter.

(iii) After the pleadings are completed, the Trial Court is directed to hear and decide the Notice of Motion latest by 31-8-2016.

(iv) Pending consideration of the Notice of Motion there would be ad-interim relief in favour of the Appellant i.e. the original Plaintiff

(v) Needless to state that the Trial Court would consider the Notice of Motion on its own merits and in accordance with law and the grant of ad-interim relief by the instant order should not be construed as any expression of opinion on the merits of the case of the Plaintiff.

4 With the aforesaid directions the Appeal from Order is disposed of.

5 In view of the disposal of the above Appeal from Order, the Civil Application No.429 of 2015 does not survive and to accordingly stand disposed of as such.

6 The parties to act upon an ordinary copy of this order duly authenticated by the Court Shirstedar.

[R.M.SAVANT, J]