

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

APPEAL FROM ORDER NO.538 OF 2015

Deepak Nagoji Rane : Appellant.
Versus
The Mumbai Municipal Corporation & Anr. : Respondents.

Mr. R K Yadav for the Appellant.
Mr. M R Bhoir for the Respondents

CORAM : R. M. SAVANT, J.
DATE : 06th June 2016

P.C.

1 The above Appeal from Order is arising out of the order dated 20/02/2015 passed by the Trial Court i.e. the learned Judge of the City Civil Court, Greater Bombay by which order the learned Judge rejected the application for grant of ad-interim protection as prayed for by the Appellant – original Plaintiff.

2 The Appellant – original Plaintiff has been served with a notice dated 16/07/2014 under Section 351 of the Mumbai Municipal Corporation Act alleging carrying out of unauthorized construction by him as mentioned in the said notice. The unauthorized construction which is alleged against the Appellant in the notice is inter-alia the construction of 1] brick masonry wall thereby dividing the verandah in two parts; 2] creation of rolling shutters on 2 sides of the wall by breaking the existing B.M. Walls; 3] erection of partition

wall of plywood material; 4] construction of loft with I section ladi coba slab admeasuring 2.80 m x 1.40 m. 5] enclosure of window between verandah and room no.16 by constructing B.M. Wall ; and 6] change of user from residential to commercial at the address of the said premises.

3 On cause being shown by the Appellant, the Competent Authority of the Municipal Corporation for Greater Mumbai (“MCGM” for short) passed an order dated 09/02/2015 thereby rejecting the reply given on behalf of the Appellant and making the notice absolute and thereby directing the Appellant to remove the offending construction. Upon this the Appellant filed the Suit in question being Long Cause Suit No.2305 of 2015 and in the said suit filed an application being Notice of Motion for restraining the Respondent MCGM from implementing the order dated 09/02/2015 by the Competent Authority of the MCGM. The said motion was moved for ad-interim relief before the learned Judge of the City Civil Court. The learned Judge of the City Civil Court by the impugned order dated 20/02/2015 has rejected the application for ad-interim relief. The sum and substance of the reasons mentioned by the learned Judge was that no material was produced by the Appellant original Plaintiff to point out the actual description of property let out by the landlord to the tenant. The Trial Court was of the view that the same amounts to suppression of material fact so as to claim ad-interim protection and thereby stall action likely to be initiated by the Respondent MCGM against the unauthorized structure or

erection. The Trial Court was of the view that the Plaintiff has failed to make out any case for grant of ad-interim protection and accordingly rejected the prayer for ad-interim relief.

4 In my view, having regard to the reasons mentioned in the impugned order and also having regard to the nature of the alleged unauthorized construction being carried out, the impugned order dated 20/02/2015 passed by the Trial Court rejecting the application for ad-interim relief does not merit any interdiction at the hands of this Court. The above Appeal from Order is accordingly dismissed.

[R.M.SAVANT, J]