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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.210 OF 2016

WITH
CIVIL APPLICATION NO.284 OF 2016
IN
APPEAL FROM ORDER NO.210 OF 2016

Shamim A. Siddiqui ...Appellant
V/s.

Municipal Corporation for the City of
Greater Mumbai & Anr. ...Respondents

WITH
CIVIL APPLICATION NO.285 OF 2016
IN
APPEAL FROM ORDER NO.210 OF 2016

Shamim A. Siddiqui ...Applicant

IN THE MATTER BETWEEN :

Shamim A. Siddiqui ...Appellant
V/s.

Municipal Corporation for the City of
Greater Mumbai & Anr. ...Respondents

Mr.P.K. Dhakephalkar, Senior Counsel I/B Mr.Jagdish Reddy for the
Appellant.

Mr.S.K. Sonawane for the Respondent - B.M.C.

Mr.P.J. Thorat for then Applicant in Civil Application No.285 of 2016.

CORAM : R.D. DHANUKA, J.
DATE : 1ST MARCH, 2016.

P.C. :-

1. By this appeal from order the appellant has impugned the order dated 16th February, 2016 passed by the learned trial Judge refusing to grant *ad-interim* relief in the notice of motion filed by the appellant (original plaintiff) *inter-alia* praying for an injunction against the Municipal Corporation for taking any steps pursuant to the notice under section 351 of the Mumbai Municipal Corporation Act, 1888 (M.M.C. Act) and the order passed by the Designated Officer.

2. There is no dispute that pursuant to the liberty granted by this Court on 6th May, 2015 the appellant produced two original documents which were not produced before the Designated Officer and before the learned trial Court in the earlier notice of motion, which was the subject matter of Appeal From Order (Stamp) No.13272 of 2015. A perusal of the order passed by the Designated Officer after such documents were produced by the appellant indicates that though the Municipal Corporation tried to search the original of the documents produced by the appellant, the Municipal Corporation could not trace the documents in view of the fact that the documents being quite old. The Municipal Corporation thereafter referred those documents to the Superintendent of Land Record to verify the authenticity of those documents but were not successful.

The Designated Officer therefore, passed an order of demolition of the impugned structure.

3. A perusal of the order passed by the learned trial Judge indicates that the learned trial Judge himself has tried to compare the two documents produced by the appellant with the notice issued under section 351 of the M.M.C. Act and came to a *prima-facie* conclusion that the documents produced by the appellant did not pertain to the notice structure mentioned in the notice issued under section 351 of the M.M.C. Act.

4. There was no affidavit in reply filed by the Municipal Corporation before the learned trial Court. The impugned order passed by the learned trial Court appears to be not in consonance with the reasons recorded by the Designated Officer in the impugned order which was the subject matter of the said notice of motion.

5. In my view, the learned trial Judge in the facts and circumstances of this case could not have refused to grant *ad-interim* relief without giving a reasonable opportunity to the appellant to prove the authenticity of the said two documents in view of the fact that the Municipal Corporation could not trace those documents.

6. In my view, the interest of justice would be met if the *ad-interim* order is granted to the appellant and hearing of the notice of motion is expedited.

7. I therefore, pass the following order :-
- a). The order dated 16th February, 2016 passed by the learned trial Judge refusing to grant *ad-interim* relief is set aside. There shall be an *ad-interim* relief in terms of prayer clause (a) of the notice of motion which shall be in force till the notice of motion is decided by the learned trial Judge and if the same is adverse against the appellant then for a period of two weeks thereafter.
 - b). The Municipal Corporation is directed to file affidavit in reply within four weeks from today and a copy thereof shall be served upon the plaintiff's advocate simultaneously. Re-joinder, if any, shall be filed by the plaintiff within two weeks from the date of receipt of the affidavit in reply.
 - c). Insofar as the application for impleadment filed by the complainant is concerned, the learned trial Judge shall dispose of the said application within four weeks from today.
 - d). It is made clear that the observations made by the learned trial Judge in the impugned order and by this Court in this order are prima-facie. The learned trial Judge shall dispose of the notice of motion on its own merits without being influenced by the observations made by the learned trial Judge and by this Court .
 - e). The learned trial Judge shall make an endeavor to dispose of the said notice of motion within three months from the date of the

plaintiff's filing affidavit in re-joinder which shall be filed within the time prescribed by this Court.

8. The appeal from order is accordingly disposed of in aforesaid terms.

9. In view of the disposal of the appeal from order, both the civil applications, including the civil application for intervention, do not survive and are accordingly disposed of. No order as to costs.

(R.D. DHANUKA, J.)