

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CIVIL JURISDICTION
APPEAL FROM ORDER NO.(L) 7928 OF 2016 with
CIVIL APPLICATION (ST) NO.7929 OF 2016

Smt.Shabnam Lalit Kapoor &anr Appellants

vs

Municipal Corporation of Greater Mumbai & anr .. Respondents

Mr.Simil Purohit i/b Mr. Kalpesh Joshi for Appellants

Mr.K.P.P.Tiwari for Appellant in A.O.(St.) No.9850 of 2016

Mr.S.K.Sonawane for Respondent-BMC

Mr.T.A.Pawar Asst.Engineer (B & F) Mumbai

Municipal Corporation present in Court

CORAM: G.S.KULKARNI, J

DATE: 3RD MAY, 2016

P.C.

1. Heard Mr.Purohit learned counsel for the appellant and Mr.Sonawane learned counsel for the Municipal corporation.

2. The appellants/Original plaintiffs have preferred this appeal against the order dated 24th February, 2016 passed by the learned Judge, City Civil Court, at Dindoshi whereby the learned Judge has refused ad-interim reliefs on a draft notice of motion in L.C.Suit No.457 of 2016. The challenge in the suit was to a notice dated 6th February 2016 under section 488 of the Mumbai Municipal Corporation Act, 1888. In the context of this notice the appellants had raised a contention that the assertion of the

Municipal Corporation that earlier a notice dated 22nd January 2013 was served on the appellants under section 351 of the Act was disputed by the appellants. Eventually the learned trial Judge considering the material as placed on record at the ad-interim stage passed the impugned order refusing ad-interim reliefs to the appellants.

3. By an order dated 29th March, 2016 this appeal was adjourned to enable learned counsel for the Municipal Corporation to take instructions as to whether the Municipal Corporation would hand over copy of the notice issued under section 351 of the Mumbai Municipal Corporation Act, 1888 to the appellant and take further steps in that regard, as the case of the appellant is that the notice under section 351 was not received by the appellant. Mr.Sonawane learned counsel for the Corporation on instructions submits that copy of the notice dated 22nd January 2013 under section 351 of the Act as regards the suit structure is already handed over to the learned counsel for the appellant which is accepted by the appellant as a service of the said notice on the appellant.

4. Mr.Sonawane learned counsel for the Municipal Corporation

on instructions of Mr.T.A.Pawar, Assistant Engineer (B & F) K/W Ward states that the Municipal Corporation is ready to give hearing to the appellants and will not act on the communication challenged in the suit. He states that after hearing the appellants, an appropriate order as per law will be passed. In view of this statement, since cause of action in the present appeal does not survive, it is not necessary to examine the merits of the rival contentions.

5. The appellants will apply for inspection of documents to the respondent-Corporation within one week from today. The respondent-Corporation will accordingly give inspection of the documents which are available with them and are germane to the controversy at hand within a period of three weeks thereafter. After the inspection is so given, the appellants will file reply within two weeks thereafter. The competent authority will conclude the proceeding as early as possible. Till the conclusion of the proceeding and a period of one month thereafter the action will not be taken against the suit structures.

6. Needless to observe that if the appellant does not submit their

reply to the show cause notice after the time as prescribed in clause 4 of the order above, the Corporation would be at liberty to proceed and pass final orders on the show cause notice.

7. Since the appeal from order is being disposed of in the above terms, suit filed by the appellants being L.C.Suit No.457 of 2016 also does not survive and the learned counsel for the appellants states that appropriate application for withdrawal of the suit will be made within one week. Since the notice handed over today are to be construed as fresh cause of action, earlier notices issued do not survive.

8. Appeal from order is disposed of in above terms. Civil Application (St) No.7929 of 2016 which is pending is also disposed of.

G.S.KULKARNI, J

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