

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.419 OF 2016
IN
S.C. SUIT NO.3430 OF 2004
WITH
CIVIL APPLICATION NO.1008 OF 2016

Mr. Harjeet Singh Gandhi Appellant
(Ori. Plaintiff)
vs.

The Municipal Corporation of Greater Bombay & Anr. Respondents

Mr. Sandip J. Ghogare, Advocate for the Appellant.
Mr. M.R. Bhoir, Advocate for respondent no.1.
Mr. Vaibhav Karnik, Advocate for respondent no.2

Coram : Smt. R.P. SondurBaldota, J.

Date : 11th April, 2016

P.C.

1 This First Appeal arises out of the judgment and decree dtd. 30th January, 2016, by which the Bombay City Civil Court dismissed the appellant's suit to challenge notice dtd. 19th July, 2014 issued by respondent no.1, Mumbai Municipal Corporation under Section 351 of Mumbai Municipal Corporation Act as illegal bad in law and for injunction to restrain respondent no.1 from pulling down, removing and/or demolishing the unauthorised work in the suit premises. Respondent no.2 is the society in the building, of which the

unauthorised construction is carried out. The description of the unauthorised work carried out by the appellant as stated in the impugned notice reads as follows:

“(1) Amalgamation of two flats, society office at ground floor and two flats at first floor by removing internal partition, walls and change of user of ground and first floor from residential user to Health club use, (2) construction of mezzanine floor as shown in sketch. (3) Enclosure of front open space at ground floor below the balcony and left side open space at ground level below the building line at first floor, (4) provision of internal staircase from ground floor to mezzanine floor and first floor, (5) lowering of plinth”

The appellant sent reply dtd. 26th July, 2004 denying that he had carried out unauthorised work as described in the notice and sought additional time i.e. time beyond 7 days to enable him to collect necessary documents in that regard. Thereafter there was no further correspondence from the side of the appellant. The Assistant Municipal Commissioner G-North Ward, by his order dtd. 3rd September, 2004 directed the appellant to remove unauthorised work described in the notice and cautioned him that otherwise the same would be demolished departmentally at his cost.

2 There is no dispute that the building plans as sanctioned by Mumbai Municipal Corporation for construction of the building of respondent no.2 did not provide for any of the

work described in the notice. As such, there can be no question of the unauthorised nature of the extensive work described in the notice. The appellant, however, claimed in the suit and also sought to establish that he had made applications through the builder from whom he had purchased the premises for regularisation of the changes made. The first application, according to him was dtd. 3rd December, 2003. Perusal of this application however shows that it was not for regularisation of the unauthorised work already carried out but for “proposed amalgamation of two residential units i.e. R1 and R2 and change of user from residential to commercial at Unit no.R1 and R2 on property being F.P. No.238, TPS III of Mahim Division, Mahim, Mumbai”. A copy of the application is annexed at page no.254 of the appeal papers. There is a dispute between the two sides on production and admission of the documents in evidence. According to the appellant, the documents were produced and admitted in evidence. He claims that copy of the first application for regularisation was obtained by him by making an application to the Executive Engineer (G/N Ward), Building Proposals (City), M.C.G.M., Byculla Mumbai under the Right to Information Act and that the copy had been produced in evidence and marked as Exhibit “28”. Perusal of the document at Exhibit “28” at page 253 makes it clear that what was produced and has been admitted in evidence is copy of the application filed by the appellant under the Right to Information Act. Exhibit “28” describes the details of the xerox copies required and states that

the appellant is ready and willing to pay all necessary charges as and when the copies of the documents are given. The copy of the application dtd. 3rd December, 2003 at page 254 is an annexure to Exh. '28'. Such annexure in the absence of specific evidence in the deposition of the appropriate witness can not be treated as production of a document much less it's admission in evidence. Firstly, this document is not by the appellant. It was apparently sent by the builder. Therefore, it could not have been proved through the appellant. Secondly the appellant could have summoned somebody from the office of respondent no.1 for production and proof of the original. But no such attempt was made by him. In any case, the application was not for regularisation of the unauthorised work described in the notice. It was only for amalgamation of two residential units and change of user of those two residential units from residential to commercial. Therefore, this document even if treated to be produced in evidence, would have been of no assistance whatsoever to the appellant to establish authorisation of the disputed work.

3 The second application for regularisation came to be filed during the pendency of the suit i.e. on 31st August, 2009. In the application, the appellant admits in terms that he has done internal changes in the flats without permission of respondent no.1 and requested for regularisation of the same. Respondent no.1, by it's order dtd. 28th July, 2011 rejected the

application for two reasons. The first reason was non-compliance with the requisitions by the respondent vide its letter dtd.8th September, 2009. The second reason is that the proposal is not of approvable nature as per D.C. Regularisation in force. The trial court at paragraph 32 of the impugned order has noted that the request for regularisation made by the appellant did not cover entire unauthorised work described in the notice. There is not a single line in the proposal of the Architect touching construction of mezzanine floor, enclosure of front open space at ground floor below the balcony and left side open space at ground level below the building line at the first floor, provision of internal staircase from ground to mezzanine floor and and first floor and lowering of the plinth". Thus, the second attempt of the appellant at regularisation of the unauthorised work has also failed.

4 Mr. Ghogare, the learned advocate for the appellant submits that the very purpose of the appellant behind purchase of the two flats was to run a health-club therefrom. This fact he had communicated to the builder and suitably modified the premises. Even if this claim is accepted, the same does not change the unauthorised nature of the work. Therefore, the notice issued by the respondent under Section 351 of the Mumbai Municipal Corporation Act and the final decision taken thereon is justified. Hence, the First Appeal is dismissed.

5 In view of dismissal of the First Appeal, the Civil Application does not survive. The same is accordingly disposed off.

(Smt. R.P. SondurBaldota, J)