JPP

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

APPEAL FROM ORDER (ST.) NO. 9004 OF 2016
with
CIVIL APPLICATION (ST.) NO. 9006 OF 2016

Mr. Sanjay Krishna Mestri. … Appellant/Applicant
(Orig. Plaintiff.)

V/s.

Municipal Corporation for Greater Mumbai ... Respondents
(Orig. Defendants.)

Mr. Mohit Jadhav for the Appellant/Applicant.
Mr. A.V. Diwate for the Respondent - BMC.

CORAM : N.M. JAMDAR, J.

DATE : 4 APRIL, 2016.

P.C. **:-**

The Appellant challenges the order passed by the City Civil Court dated 18 February 2016, dismissing the Notice of Motion taken out by the appellant seeking protection of the structure in question.

2. The learned Counsel for the Appellant submitted that the Appellant had produced documents in support of its contentions. He submitted that the Notice which was challenged in the Suit has been issued under Section 55 of the Maharashtra

Regional Town Planning Act, 1966, which is not a correct provision that could be invoked.

2. Neither of these arguments will advance the case of the Appellant any further for grant of any protection to the structure which has been found to be unauthorized by the Planning Authority. The Court will have to keep in mind whether the Appellant has made out any prima-facie case as regard the legality of the structure. Admittedly, there is no permission obtained for the Suit structure. What is relied upon is only an application for photo-pass but no photo-pass has been issued. The Assistant Commissioner has gone through the documents submitted by the Appellants and has found that nothing is produced to prove the existence of structure prior to the datum line of 1961. The scope and ambit of the Civil Suit challenging such notices and action of the Corporation, is extremely narrow.

3. In the circumstances, no case is made out. The Appeal is dismissed. The Civil Application is also disposed of.

(N.M. JAMDAR, J.)