

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

***APPEAL FROM ORDER NO. 369 OF 2016
WITH
CIVIL APPLICATION NO. 481 OF 2016***

Shri Dnyaneshwar Mahadeo Bodke,
10th Road, Opp. Sukhmani Society,
JVPD Scheme, Juhu, Mumbai – 400 049. ... Appellant/Applicant

v/s

The Municipal Corpn. of Gr. Mumbai,
Mumbai. ... Respondent

Ms.Jyoti Chavan along with Kunal Phoole for the appellant in both
appeals and applicant in both civil applications.

Mr.A.V.Diwate for the respondent B.M.C. in both appeals.

CORAM: N.M. Jamdar, J.

DATED : 12 April 2016

ORAL ORDER:

Admit. Taken up for final disposal by consent of parties.

2 The Appellant challenges the order passed by the City Civil Court, Mumbai, dated 19 March 2016 refusing to grant ad-interim relief in notice of motion taken out by the Appellant.

3 The Appellant filed a L.C. Suit No.720 of 2016. The suit was filed by the Appellant challenging the notice issued to him under Section 314 of

the Mumbai Municipal Corporations Act by the Respondent Corporation. The notice states that the structure in question is constructed on footpath/road of the Corporation and that the Appellant did not have licence under Section 313 of the Act nor ground rent is paid to the Corporation. This notice was challenged in the suit and notice of motion was taken out for grant of interim relief.

4 The short question that arises in this appeal is, whether the Appellant had made out a case for ad-interim protection till the notice of motion is heard. In the present case, the Appellant had filed a suit bearing L.C. Suit No.586 of 2004 challenging the notice dated 8 October 2004 issued under Section 314 of the Act. The suit was decreed by the City Civil Court, Mumbai, on 4 September 2008 and the Respondent Corporation was restrained from executing the notice. The Appellant has placed the decision on record which has been distinguished on the ground that the structure mentioned in the suit and the structure involved in the present suit have been made from different material. The Appellant had also produced certain permissions in favour of the appellant, property cards, proceedings of the year 1972. It cannot be said that the Appellant had absolutely no case at all that his case need even to be considered for an ad-interim relief. I am of the opinion that the appellant has crossed the threshold of deserving the hearing of notice of motion on merits.

5 Accordingly, the appeal is disposed of by continuing the ad-interim order of status-quo granted by this Court till the disposal of the notice of motion. It will be open to the Corporation to seek early disposal of the notice of motion.

6 It is made clear that, merely because this Court has continued the order of status-quo till disposal of the notice of motion, the decision on the notice of motion will be taken by the City Civil Court on its own merits.

7 In view of disposal of the appeal, the civil application does not survive and is disposed of.

(N. M. JAMDAR, J.)