

Sequeira

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

*APPEAL FROM ORDER (St.) NO. 9847 OF 2016
Along with
CIVIL APPLICATION (St.) NO. 9848 OF 2016*

Mrs.Sarla Suresh Sutrale ... Appellant.
V/s.
Mr.Gaurav Bhupendra Vasani & ors. ... Respondents.

Mr.P.J.Pandit, for the Appellant / Applicant.
Mr.K.P.Mali, for Respondent No.1.
Mr.A.V.Diware, for Respondent No.2-BMC.
Ms.Poonam Bhosale - Assistant Government Pleader, for Respondent No.3.

***CORAM : N.M. Jamdar, J.
Friday 15 April, 2016.***

P.C. :-

Admit. Taken up for disposal by consent of parties.

2. The Appellant challenges the order passed by the City Civil Court, Mumbai dated 28 March 2016 rejecting ad-interim relief in the Notice of Motion taken out by the Appellant-Plaintiff. The Appellant had taken out the Notice of motion to restrain the Respondents from dispossessing the Appellant from the suit premises.

3. The learned counsel for the Appellant submitted that the Appellant is praying for two reliefs, one is to restrain the Municipal Corporation from proceeding and pursuant to an order passed under Section 55 of the Maharashtra Regional Town Planning Act, 1966 regarding the temporary

structure on the open plot and secondly to restrain the Respondents from dispossessing the Appellant from the possession of the suit property / land. As regards the structure is concerned, the learned counsel for the Appellant after arguing the matter for some time on instructions states that the structure will be removed within period of one week from today. This submission on instructions is accepted. In addition, the Appellant will also file an undertaking to that effect within period of 3 working days from today. As regards the dispossession of the Appellant-Applicant from the suit land is concerned, prima facie considering the material it appears that an ad-interim protection till the Notice of motion is heard in favour of the Appellant-Applicant, is necessary. I have not dealt with the material on record in detail as it might prejudice the hearing of the Notice of motion. It is made clear that merely because this Court has protected Appellant to get the possession of the land by way of ad-interim order, the same will not influence the City Civil Court Judge, while deciding the Notice of motion, which will be decided as per law.

4. It is informed that the Notice of motion is placed on board on 21 June 2016 and the reply is filed by the Respondent No.1. The remaining Respondents will also file their reply. The learned City Civil Court Judge will make an endeavor to dispose of the Notice of motion as it is already listed on board and both the parties will not take needless adjournment and cooperate with the City Civil Court, Judge in disposal of the Notice of Motion. Accordingly, the Appeal is disposed of by accepting the undertaking of the Appellant that the Appellant will remove the noticee structure within period of one week from today. Till the Notice of

motion is so disposed, the possession of the Appellant in the suit land be protected. This direction is however subject to the Appellant-Applicant removing the noticee structure within time stipulated above. All contentions are kept open to be urged at the time of hearing of the Notice of Motion.

The Appeal and the Civil Application are disposed of accordingly.

(N.M. Jamdar, J.)