

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (ST.) NO. 10908 OF 2016

WITH

CIVIL APPLICATION (ST.) NO. 10960 OF 2016

IN

APPEAL FROM ORDER (ST.) NO. 10908 OF 2016

Smt. Fatimabi Habib Sayyed

...Appellant

Versus

The Municipal Corporation of Gr.Mumbai

...Respondent

Mr. B.S. Shukla, for the Appellant.

Ms. Madhuri More, for the Respondent/MCGM.

CORAM : G.S. KULKARNI, J.

DATE : 5th December 2016

ORDER :

1. Not on board. Taken on board on a praecipe as moved on behalf of the Appellant.

2. Heard Mr. Shukla, the learned Counsel for the Appellant.

This Appeal is directed against the order dated 22nd March 2016 passed by the learned Judge, City Civil Court, Bombay in draft Notice of Motion in L.C. Suit No. 669 of 2016. By the impugned order, the

learned Trial Judge has rejected the prayers for ad-interim reliefs. It is observed in paragraph 4 of the order that the structure of the Appellant/Plaintiff is nothing but a sugarcane machine which is running in the premises admeasuring 2 mtrs x 3 mtrs and that there was no permanent structure. It is also recorded that the structure is not in existence and same is removed by the Defendant Corporation on 18th March 2016. Such photographs were placed on record dated 17th March 2016 and 18th March 2016 on behalf of the Corporation. Taking into consideration these facts, ad-interim reliefs are refused by the learned Judge.

3. The learned Counsel for the Appellant submits that the Respondent Corporation ought to have filed a Reply, as the Appellant/Plaintiff was disputing the said contentions as urged by the Respondent Corporation.

4. Be that as it may, the impugned order is an ad-interim order. Notice of Motion itself is pending adjudication. The Respondent Corporation is directed to file Reply, if not already filed. The Reply be filed within a period of six weeks from today.

5. After pleadings are complete, the Appellant is at liberty to request the learned Trial Judge to take up the hearing of the

Notice of Motion, which be considered on its own merits.

6. The Appeal from Order is accordingly, disposed of in the aforesaid terms. No costs.

7. The Civil Application would also not survive and disposed of as such.

8. Needless to observe the learned Trial Judge shall decide the Notice of Motion on its own merits without being influenced by the impugned ad-interim order and this order.

[G.S. KULKARNI, J.]