

1. Heard the learned Counsel for the parties. By this appeal the Appellant/Plaintiff has challenged the order dated 28 January 2016 passed by the learned Judge, City Civil Court at Mumbai, in Notice of Motion No.2727 of 2012 in L.C.Suit No.2390 of 2012, whereby for the reasons as set out in the impugned order, the learned Trial Judge has dismissed the Notice of Motion filed for injunctory reliefs.

2. On 18 April 2016 this matter was circulated on the Production Board at the instance of the Appellant when the learned Counsel for the parties had made extensive submissions. The matter was then adjourned for the learned Counsel for the Appellant to take instructions as to whether the Appellant would make an application to the Municipal Corporation for regularization of the suit structure. Till the adjourned date of hearing (till today) the Corporation was directed not to take any coercive action to demolish the suit structure which according to the Appellant/Plaintiff is running till today.

3. Mr.Suhas Oak, learned Counsel appearing for the Appellant states that he has instruction from his client-the Appellant/Plaintiff that the Appellant is agreeable/willing to make an application for regularization of the suit structure as also make a representation in regard to the same. It is submitted that in view of this instructions, the Appellant would withdraw the suit filed by him before the City Civil Court in which the impugned order has been passed.

4. Taking into consideration the facts and circumstances of the case, the submission as being made by Mr.Oak appear to be quite appropriate. Accordingly, at the request of the Appellant L.C.Suit No.2390 of 2012 is allowed to be withdrawn and disposed of as such.

5. As regards the application to be submitted by the Appellant/Plaintiff to the Municipal Corporation for regularization as also a representation in that regard, the following orders are passed:-

ORDER

(i) The Appellant/Plaintiff shall submit to the Executive Engineer, Building & Proposal Department of the B.M.C. an application in the proper form alongwith the requisite documents seeking regularization of the suit structure alongwith a representation, within a period of eight weeks from today.

(ii) If such a representation application is made by the Appellant within a period of eight weeks, the Corporation shall decide the same at the earliest and in any event within a period of eight weeks thereafter.

(iii) In the meantime, till the regularization Application/Proposal and Representation of the Appellant is decided by the Executive Engineer (B & P) Department, the Municipal Corporation shall not take any coercive action in respect of the suit structure till the communication of the order on such proposal/representation and in the event the order is adverse to the Appellant, for a further period of two weeks from the date of the communication of the order.

(iv) Needless to observe that if the Appellant fails to submit a representation application within the time limit as provided in clause (i) above, the Municipal Corporation will be at liberty to take appropriate action in regard to the suit structure as permissible in law.

6. The Appeal from Order stands disposed of in the above terms.

No order as to costs.

7. Civil Application No.516 of 2016 would not survive and stands disposed of in view of the orders passed in the Appeal from Order.

(G. S. KULKARNI,J.)