

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CIVIL JURISDICTION
APPEAL FROM ORDER (ST) NO.11234 OF 2016

Silver Star Apartment Coop Hsg.Soc & anr .. Appellants
vs
M/s Star Builders & Ors Respondents

Mr.J.S.Kini a/w Mr.Suresh Dubey for Appellants
Mr.Sandesh Patil for Respondents

CORAM: G.S.KULKARNI, JJ

DATE: 27TH APRIL, 2016

P.C.

Heard learned counsel for the parties.

1. By this appeal, the appellant/plaintiff is challenging the ad interim order dated 8th March 2016 passed on a draft notice of motion in L.C.Suit No.2512 of 2006. The appellant/plaintiff had moved a draft notice of motion for the following reliefs:

(a) Pending the hearing and final disposal of the above suit, the Hon'ble Court be pleased to pass a temporary order and injunction restraining the defendant number 1 and 2 from preventing the plaintiff from carrying on the requisition made by the defendant number 3 to demolish it the masonry tank and to level to site as called upon by its letter dated 13th March 2014 ;

(b) Alternatively pending the hearing and final disposal of the above suit, this Hon'ble Court be pleased to pass a mandatory order and directing the defendant number 1 and 2 to complete the requisition made by the defendant number 3 to demolish it the masonry tank and to level to site as called upon by its letter dated 13th March 2014;

(c) Alternatively, pending the hearing and final disposal of the suit restrain the defendant number 3 from taking any action of any nature whatsoever against the plaintiffs in regard to the masonry tank existing in the society compound of the plaintiffs.

2. By the impugned order, the learned trial Judge has refused to grant ad interim reliefs in respect of above prayers. Grievance of the appellant is that water tank which is in the premises of the society is causing nuisance to the occupants of the society premises. It is contended that the Municipal Corporation has issued a notice as the water tank in question which is constructed by the respondent no.1 and 2 is not used properly and is unclean whereby it has created a breeding ground for mosquitoes. The Corporation has issued notice dated 13.11.2015 in that regard whereby the appellant as also the respondent nos. 1 and 2 have been asked to demolish the said water tank. However, no action was taken and therefore the plaintiff have approached in the pending L.C.Suit No.2512 of 2006 by the above draft notice of motion seeking the above reliefs.

3. Learned counsel for the appellant has reiterated the

submissions as raised before the trial Court and would submit that there is a serious inconvenience to the members of the appellant/plaintiffs in view of the water tank in question. It is submitted that the notice issued by the Municipal Corporation ought to have been respected by the respondent nos.1 and 2 by demolishing the said water tank and making available also the space which is causing inconvenience to the members of the society.

4. On the other hand, Mr.Patil learned counsel for respondent nos.1 and 2 on instructions from his client respondent no.2 who is present in the Court submits that his clients are ready and willing to cover the water tank with an appropriate grill and also undertake to maintain the same and to ensure that it is not a ground for breeding of mosquitoes which would cause nuisance to the residents of the appellant/plaintiff society. He submits that respondent nos.1 and 2 shall within a period of one week from today cover the water tank with an appropriate grill and also keep it clean and maintained. Statements are accepted.

5. Considering the nature of reliefs which is demolition of the tank structure, it would be appropriate if the parties are permitted to file their respective replies as they have rival contentions to urge on these issues. It would therefore be appropriate that the notice of motion is taken up and heard by the trial Court.

6. Learned counsel for respondent nos.1 and 2 on instructions of respondent no.2 agrees to file a reply to the notice of motion before the trial Court within a period of four weeks from today. The BMC shall also file affidavit in reply within a period of four weeks from today. The appellant/plaintiff to file a rejoinder within two weeks thereafter. After pleadings are completed, the appellant/plaintiff is at liberty to approach the trial Court with a request to take up hearing of the notice of motion.

7. In the light of the above observations, no further adjudication of this Appeal is necessary. Appeal is disposed of in

above terms. No order as to costs.

8. In view of disposal of the Appeal, Civil Application (L) No.12040 of 2016 also does not survive and is disposed of accordingly.

(G.S.Kulkarni,J)

Rng

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