IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER ST. NO.12539 OF 2016
WITH
CIVIL APPLICATION ST. NO.12541 OF 2016

Ishwar Parbat Patel & Ors. ..Appellants
Vs.
The Municipal Corporation of Gr. Mumbai & Ors ..Respondents

Mr. Vishal Kanade i/b Mr J. N. Jayale for the Appellants
Mrs. M. R. Bhoir for the Respondents

CORAM : R. M. SAVANT, J.
DATE : 15th JUNE, 2016

P.C.

1 The order dated 7-4-2016 passed by the Learned Judge of the City Civil Court, Mumbai rejecting the application for ad-interim relief, is taken exception to by way of the above Appeal From Order.

2 The Suit in question being L.C. Suit No.863 of 2016 has been filed by the Appellants / Original Plaintiffs for restraining the Respondents by an order of injunction from demolishing and dispossessing the Plaintiffs from the suit premises i.e. commercial shop premises 1, 2, 3, 4,5 & 6 situated and lying at 29, Chunabhatti, 141/142, S.V.Road, Opp Khira Nagar, Santacruz (W) Mumbai 400054, adm. 2958 sq.ft. carpet area divided into 6 shops having same area of mezzanine floor, without following the due process of law. In the said Suit, the Plaintiffs have filed the instant Notice of Motion seeking an

interim injunction in the same terms as sought vide prayer clause (a) of the plaint. The Suit has been filed by the Plaintiffs on the apprehension that the officers of the MCGM would demolish the suit shops without following the due process of law. The said Notice of Motion was moved for ad-interim reliefs. In support of their case that the said shops were in existence, the Plaintiffs have relied upon an unregistered tenancy agreement dated 25-1-2016 between one M/s Dosanji Sharaf Aly & Co. on the one part and the Plaintiffs on the other part, wherein in the sketch annexed to the said unregistered tenancy agreement 6 shops have been shown.

3 The Trial Court rejected the grant of ad-interim reliefs by making a reference to previous proceedings filed in the rent court being RAD Suit No.755 of 1990 which was filed against one Western Scale Company which was a tenant occupying the premises in question. In the Judgment rendered in the said Suit the shop premises have been described as adm 13'9" X 25'3" and covered area for storage admeasuring 55'3" X 45'. Against the judgment rendered in the said Suit by the Trial Court it seems that the landlord has filed an Appeal. The judgment in the Appeal revealed that the structure of the said tenant had one door on the north west corner for loading and unloading articles and another door to the back side for entry in the office room. Hence having regard to the judgments rendered by the Trial Court as well as the Small Causes Court Mumbai, the Trial Court observed that the said judgments

do not reveal that there are 6 shops in existence, which 6 shops are the suit property in the instant case. The Trial Court has further adverted to the fact that the Western Scale Company filed Civil Revision Application No.425 of 2008 in this Court against the judgment of the Appellate Bench of the Small Causes Court. In the said Civil Revision Application, consent terms were filed on 28-1-2016 to the effect that the Plaintiffs in the instant Suit are now the tenants of the said premises and that the earlier tenant has no objection for transferring the tenancy. The Trial Court having regard to the contents of the said consent terms observed that the said consent terms also do not reveal that there are 6 shops as is the case of the Plaintiffs in the present Suit. The Trial Court also observed that even in the sketch annexed to the unregistered tenancy agreement dated 25-1-2016 on which reliance was placed by the Plaintiffs, 6 shops are not shown and the said map only shows 5 shops. The Trial Court has thereafter adverted to the photographs produced by the Plaintiffs which according to it also do not show the existence of 6 different shops as pleaded.

4 The Learned Counsel appearing on behalf of the MCGM draws this courts attention to the panchnama dated 1-2-2016 which panchanama relates to the demolition being carried out in Retiwala Compound Western Scale Company on 1-2-2016. The said panchanama records that there was a lock put up on the outer door and work of construction was being carried out

inside. The panchanama further records that demolition was carried out of the entire structure. The instant Suit has been filed thereafter sometime in March 2016 seeking the relief that the said shops should not be demolished unless due process of law is followed by the MCGM. The demolition of the said shops on 1-2-2016 and filing of the Suit in March 2016 for the reliefs sought leads to a suspicion that after putting up the structure again that the Suit was filed for injunction as prayed for.

5 In my view therefore, the order passed by the Trial Court rejecting the ad-interim reliefs cannot be faulted with. The Appeal From Order is accordingly dismissed.

6 Needless to state that the findings recorded are only for the purpose of considering the ad-interim reliefs, the Notice of Motion would be decided on its own merits and in accordance with law.

7 In view of the dismissal of the above Appeal From Order, the Civil Application St. No.12541 of 2016 does not survive and to accordingly stand disposed of as such.

[R.M.SAVANT, J]