

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CIVIL JURISDICTION
APPEAL FROM ORDER NO.433 OF 2016
IN
L.C.SUIT NO.877 OF 2016

Smt Savitri A.Mishra .. Appellant
vs
The Municipal Corporation of Gr.Bombay .. Respondent

Mr.Harshal Mirashi for Appellant
Mr.A.V.Divarte for BMC-Respondents
Mr.Amit Patil J.E. (B & F) Bombay Municipal Corporation
present in Court

CORAM: G.S.KULKARNI, J
DATE: 4TH MAY, 2016

P.C.

1. Heard learned counsel for the parties. This appeal challenges the order dated 21st April, 2016 passed by the learned Judge, City Civil Court at Bombay in Notice of motion no.1658 of 2016 in L.C.Suit No.877 of 2016. By the impugned order the learned trial Judge has rejected the prayers for ad-interim reliefs as sought for by the appellant/plaintiff in the captioned notice of motion.

2. When this appeal was heard on the last occasion, learned counsel for the Municipal Corporation had sought time to take instructions on the issue whether an order is passed on the

notice dated 4th August, 2015 issued by the Municipal Corporation under section 351 of the Mumbai Municipal Corporation Act, 1888. There is no dispute that the appellant had submitted a reply to the said notice being reply dated 6th August 2015 which is annexed at page 71 of the paper book.

3. Mr.Divarte learned counsel for the Municipal Corporation on instructions from the Officer who is present in the Court, makes a statement that the Municipal Corporation/the Designated Officer has not passed an order on the said show cause notice. On instructions Mr.Divarte submits that the Municipal Corporation is willing to give a personal hearing to the appellant and after considering the reply shall pass an order in accordance with law on the show cause notice dated 4th August, 2015. At this stage, learned counsel for the appellant submits that the appellant be permitted to file an additional reply along with fresh documents within a period of two weeks from today. No prejudice would be caused to the Municipal Corporation if appellant is so permitted. In case the appellant does

not submit any additional reply along with fresh documents within two weeks the Corporation shall proceed to hear the appellant and proceed to pass final orders on the show cause notice.

4. The Designated Officer shall pass final orders on the show cause notice within a period of four weeks from the receipt of the additional reply if any from the appellant. Needless to observe that the Municipal Corporation shall adjudicate the show cause notice and pass an order thereon in accordance with law.

5. In view of the above submission as made on behalf of the Municipal Corporation the impugned order dated 21st April, 2016 is required to be quashed and set aside. Ordered accordingly.

6. In the meantime, till the decision of the show cause and communication of the orders thereon to the appellants the Municipal Corporation shall not take any coercive action in respect of the said structure.

7. In the light of the above order, learned counsel for the appellant seeks leave to withdraw L.C.Suit no.877 of 2016 which is pending on the file of the City Civil Court L.C.Suit No.877 of 2016 is allowed to be withdrawn and disposed of as such.

8. A copy of this order be forwarded to the Registrar, City Civil Court to be placed on the record of L.C.Suit No.877 of 2016.

9. Appeal from order is accordingly disposed of in above terms. Civil Application No.560 of 2016 would also not survive and accordingly the same is disposed of.

Parties to act on authenticated copy of this order.

G.S.KULKARNI, J

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