

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER ST NO.13132 OF 2016
WITH
CIVIL APPLICATION ST NO.13134 OF 2016**

Mrs. Samira Banoo W/o

Mohd. Saad Zakariya

..Appellant

Vs.

Municipal Corporation of Greater Mumbai & Anr

..Respondents

Mr. A. K. Shukla i/b Ms Asha Ram Shukla for the Appellant /Applicant

Mrs. Madhuri More for the Respondents

CORAM : R. M. SAVANT, J.

DATE : 13th JULY, 2016

P.C.

1 The above Appeal From Order takes exception to the order dated 12-4-2016 passed by the Learned Judge of the Bombay City Civil Court, Greater Mumbai, by which order the ad-interim relief came to be refused to the Appellant / original Plaintiff. A notice under Section 53(1) of the Maharashtra Regional Town Planning Act 1966, came to be issued in respect of the flat occupied by the Plaintiff being Flat No.802, 8th floor, Sana Heights, Huzaria Street, Near Mastan Tank, Nagpada, Mumbai 400 008. It was alleged in the said notice that the Plaintiff has carried out unauthorised construction in the refuge area on the 8th floor by construction of flat on the east side of the refuge area of the building. The construction alleged is of putting up partition wall vertical flooring and aluminum window so as to enclose the same and carved out a flat. Upon receipt of the said notice, the Plaintiff has filed the Suit

in question being Suit No.815 of 2016 and has filed the instant Notice of Motion claiming interim reliefs pending the Suit. The Municipal Corporation of Greater Mumbai (MCGM) appeared at the hearing of the Notice of Motion and filed a number of documents being complaint dated 23-7-2013, inspection report dated 17-1-2015, letter dated 9-2-2015, second inspection report dated 29-5-2015, notice under Section 53(1) of the MRTP Act dated 2-3-2015, FIR dated 6-2-2016, photographs of the notice structure, notice issued under Section 488 of the MMC Act dated 6-4-2016 for demolition of the structure in question and to bring it in consonance with the sanctioned plan. It was the case of the Plaintiff that the suit flat is in the name of Mrs. Samira Banu and the notice issued is to one Salauddin R. Shaikh.

2 The Trial Court on the basis that the documents produced by the MCGM, observed that the said notice was not only issued to Mr. Salauddin Shaikh but was also issued to the present Plaintiff and that the Plaintiff has received the same. The Trial Court recorded a finding that the Plaintiff has carried out construction in the refuge area (wrongly referred to as refuse area in the order). The Trial Court further observed that the Plaintiff is called upon to restore the refuge area on the 8th floor of Sana CHS Ltd on C.S. No.1188, 1189 and 1190, 71 Huzaria Street, Nagpada Mumbai or apply under Section 44 of MRTP Act for retention of the work. The Trial Court has further observed that the Plaintiff has not filed any document to prove the authorisation of the

construction and therefore came to a conclusion that the Plaintiff was not entitled to the grant of any ad-interim relief and accordingly rejected the application. This is a case where the alleged unauthorised construction is carried out in the refuge area. The refuge area is to be kept open to take care of any emergency that would arise in the building. The building is of 18 floors and the refuge area is on the 8th and 15th floor. Since the construction is carried out in the refuge area, without any permission, no fault can be found with the impugned order passed by the Learned Judge of the City Civil Court refusing ad-interim reliefs, the Appeal from Order is accordingly dismissed.

3 In view of the dismissal of the above Appeal From Order, the Civil Application St No.13134 of 2016, does not survive and to accordingly stand disposed of as such.

[R.M.SAVANT, J]