

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4613 OF 2012

M/s. Alfa Engineering Company ... Petitioner
Vs.
Municipal Corporation of Greater Mumbai and others ... Respondents

Mr. Rajesh Parab for Petitioner.
Mr. Vinod Mahadik for Respondent No.1-MMC.
Mr. Mehul Shah for Respondents No.2 and 3.

CORAM : R. G. KETKAR, J.
DATE : APRIL 25, 2016

P.C. :

Heard Mr. Parab, learned Counsel for petitioner, Mr. Mahadik, learned Counsel for respondent No.1-MMC and Mr. Shah, learned Counsel for respondents No.2 and 3 at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner has challenged the judgment and order dated 09.03.2012 passed by the learned Judge, presiding over Court Room No.8 of the Bombay City Civil Court at Bombay in Chamber Summons (Exhibit-6) in L.C. Suit No.677 of 2008. By that order, the learned trial Judge partly allowed the Chamber Summons taken out by respondents No.1 and 2 and directed the petitioner, hereinafter referred to as 'plaintiff' to implead respondent No.2 herein as a party in the Suit.

3. Plaintiff has instituted Suit challenging the letter / order dated 08.03.2008 issued by the respondent No.1, Municipal Corporation for Greater Mumbai (for short 'Corporation') thereby revoking the licence / permit dated 22.12.1992 as also for perpetual injunction restraining the Corporation from taking any action in pursuance of order / letter dated 08.03.2008. During the pendency of the Suit, respondents No.2 and 3

herein took out Chamber Summons for impleading them as party in the Suit. By the impugned order, the learned trial Judge partly allowed the Chamber Summons in the aforesaid terms. Against this order, plaintiff has instituted the present Petition.

4. In support of this Petition, Mr. Parab submitted that earlier, Chamber Summons taken out by respondents No.2 and 3 was allowed by the learned trial Judge. Aggrieved by that decision, plaintiff instituted Writ Petition No.2522 of 2011 in this Court. By order dated 20.12.2011, this Court allowed the Petition and set aside the order dated 31.03.2010 passed by the learned trial Judge and remitted the matter for deciding the Chamber Summons afresh in the light of the observations made in that order. He submitted that in fact the plaintiff's father late Hakimuddin Ismile Attarwala started the business of M/s. Alfa Engineering Company in Gala No.19 along with his sons Abizer Hakimuddin Attarwala and Zohar Hakimudding Attarwala. Later on, Saifuddin Attarwala participated in the said business. Gala No.19 was taken by Hakimuddin Attarwala from respondents No.2 and 3 on rental basis. Since 1981 till today, the business of M/s. Alfa Engineering Company is being run in the said Gala No.19. He further submitted that on 22.12.1992, permission was granted by the Corporation under Section 390 and 479 of the Mumbai Municipal Corporation Act, 1888 (for short 'Act') for establishing a factory. The reliance placed by respondents No.2 and 3 on the purported application on the basis of which permission was issued is a forged document. He submitted that licence was issued to the plaintiff not on the basis of the so called application made by the respondent No.2. He further submitted that respondents No.2 and 3 have come with inconsistent case. On one hand, they are contending that respondent No.2 is the owner of Gala No.19 and on the other, they are contending that they are partners of M/s. Alfa

Engineering Company. He, therefore, submitted that the learned trial Judge has committed error in partly allowing the Chamber Summons.

5. On the other hand, Mr. Shah invited my attention to the application made by the respondent No.2 as also the finding recorded by the learned trial Judge in paragraphs 7 to 9 of the impugned order. Perusal of paragraphs 7 to 9 of the impugned order shows that after considering the material on record, namely partnership deed dated 01.02.1982, application made by the respondent No.2 and the permission dated 22.12.1992, it appears that Corporation had issued that permission on the basis of the application made by the respondent No.2. Mr. Parab submitted that the application is a forged document. At this stage, the said issue cannot be gone into and it would be open to the plaintiff to agitate this issue during the course of trial. The learned trial Judge also considered the complaints made by respondents No.2 and 3. On the basis of those complaints, the Corporation had revoked the permission. Thus, at this stage, it is not disputed that the respondent No.2 is the owner of Gala No.19. It is also material to record that on the basis of complaint made by respondent No.2, Corporation issued impugned letter / order 08.03.2008. Prima facie, at this stage, the licence appears to have been issued on 22.12.1992 on the basis of application made by the respondent No.2.

6. In view thereof, I do not find that the learned trial Judge has committed any error in passing the impugned order. Hence, Petition fails and the same is dismissed. It is expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) of C.P.C.

7. Needless to observe that the learned trial Judge will decide the Suit on the basis of evidence on record and in accordance with law and uninfluenced by the observations made in the impugned order and this order. Liberty is reserved to the parties to apply for expeditious disposal of the Suit. If such application is made, the learned trial Judge will pass appropriate order. Order accordingly.

(R. G. KETKAR, J.)

Minal Parab