IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.356 OF 2016

ALONGWITH

CIVIL APPLICATION NO.457 OF 2016

Shri. Shyam Rajkishore Singh .. Appellant/Applicant

Versus

The Municipal Corporation of Gr. Mumbai
and another .. Respondents

Mr. Mayur Khandeparkar a/w Mr. Subhash Bane i/by S. B. Legal Prop. S. G. Bane for the Appellant/Applicant.

Mrs. Madhuri More for the Respondent No.1.

Mr. Vishal Kanade i/by Mr. J. A. Khan for the Respondent No.2.

CORAM : R.M. SAVANT, J.
DATE : 18th JULY 2016

P.C.

1 The order dated 02.06.2015 passed by the Learned Judge of the City Civil Court, Greater Mumbai, refusing ad-interim reliefs to the Appellant/original Plaintiff is taken exception to by way of the above Appeal from Order. The rejection of the said ad-interim reliefs is on the ground that the Plaintiff has not joined the owner of the property as party to the suit, and that the owner who was the caveator is disputing the structure in the notice as being authorized. The Trial Court has further

observed that the Defendant/Corporation has passed an order after considering the documents filed by the Plaintiff and therefore prima-facie the Corporation has followed the procedure required as required to be followed. The Plaintiff has been issued with a notice under Section 351 of the MMC Act alleging unauthorized construction of the first floor on the structure in question. In so far as the Plaintiff is concerned, he replied to the said notice and contended that the notice structure is in existence prior to the datum line. The Designated Officer has by his order dated 28.05.2015 rejected the contentions raised by the Plaintiff in his reply and made notice absolute resulting in the Plaintiff filing the instant suit being LC Suit No.5961 of 2015 wherein the instant draft Notice of Motion came to be filed for interim reliefs and in which Notice of Motion application for ad-interim reliefs was made out.

2 The above Appeal from Order had come up for admission before a Learned Single Judge of this Court on 03.06.2015. The Learned Judge expressed a view that since the Trial Court has issued a direction to the MCGM to file a reply, it was desirable on the part of the Learned Judge of the Trial Court to have granted to deserve the position as existing on the date of the suit. The Learned Single Judge therefore directed the parties to maintain status-quo in respect of the suit property. The above Appeal from Order thereafter came up before another Learned Single

Judge (N. M. Jamdar, J) on 28.03.2016. On which day, the Learned Counsel appearing for the MCGM sought further time to file a reply. The Learned Judge issued a direction on the said day that if the sanctioned plan is available with the MCGM, it shall be produced by it on the next date. Thereafter on 07.04.2016 a direction once again came to be issued to the Learned Counsel appearing for the MCGM pursuant to the order dated 28.03.2016. However till this day, the MCGM has not complied with the direction in so far as the production of sanctioned plan is concerned. In so far as whether the inspection of the site in question was carried out by the MCGM prior to the issuance of the notice under Section 351 MMC Act, the Plaintiff has disputed the said position and thereby the same is a contentious issue between the parties. Be that as it may, since the order of status-quo is operating since 03.06.2015 i.e. almost over a period of one year and having regard to the fact that the above Appeal from Order is being adjourned at the behest of the MCGM to produce the sanctioned plan, in my view, it would be appropriate if the Notice of Motion is itself directed to be disposed of by the Learned Judge of the City Civil Court within a particular time frame. Hence, the following directions :-

I) The Learned Counsel appearing for the Appellant/Applicant Mr. Mayur Khandeparkar on instructions states that he has no objection to the Chamber

Summons No.1830 of 2015 being allowed and the Applicant i.e. Respondent No.2 herein being joined as party Defendant to the suit. Amendment to be carried out in the suit and the Notice of Motion in terms of the direction that would be given by the Trial Court.

II) The MCGM to file its affidavit in reply to the Notice of Motion within two weeks from date.

III) The Trial Court is directed to hear and decide the Notice of Motion expeditiously and latest by 30.09.2016.

IV) The Trial Court would have due regard to the contentions raised on behalf of the parties and would also consider the sanctioned plan if produced by the MCGM at the hearing of the said Notice of Motion and draw its conclusions if the same is not produced.

V) Needless to state that the Notice of Motion would be decided on its own merits and in accordance with law uninfluenced by the ad-interim order which is in operation since 03.06.2015 or the instant order. The contentions of the parties are kept open for being urged before the Trial

Court.

VI) The order of status-quo which is in operation in the above Appeal from Order would continue to operate till the disposal of the Notice of Motion.

3 With the aforesaid directions, the Appeal from Order is accordingly disposed of.

4 In view of the disposal of the Appeal from Order, the Civil Application does not survive and to accordingly stand disposed of as such.

[R.M. SAVANT, J]