

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER ST.NO. 14906 OF 2016
WITH
CIVIL APPLICATION ST NO.14907 OF 2016**

Suresh Ratan Mali ..Appellant
Vs.
Municipal Corporation of Greater Mumbai & Anr ..Respondents

Mr. Milan Desai i/b Mr. T. R. Patel for the Appellant / Applicant
Mrs. M. R. Bhorl for the Respondent No.1
Mr. Dharam Sharma a/w Ms Uma Sharma i/b Dharam & Co, for the
Respondent No.2

CORAM : R. M. SAVANT, J.
DATE : 7th JUNE, 2016

P.C.

1 The above Appeal from Order challenges the order dated 20-5-2016 passed by the Trial Court i.e. the Learned Judge of the City Civil Court, Bombay, Borivali Division, Dindoshi (Branch), by which order the renewed application for ad-interim relief filed by the Appellant / original Plaintiff came to be rejected.

2 The Appellant who is the original Plaintiff was served with a notice under Section 351 of the MMC Act alleging unauthorised construction. The unauthorised construction alleged was of a structure admeasuring 25ft x 31 ft with brick masonry walls and AC sheet roof as shown in the said notice

dated 26-6-2014. The Plaintiff after the receipt of the said notice vide his letter dated 1-7-2014 replied to the same. In the said reply it was the case of the Plaintiff that the structure was in existence prior to the year 1960. The Plaintiff sought to rely upon various documents which have been mentioned at the foot of the said letter dated 1-7-2014 amongst which were the Assessment Tax Bill, copy of the Collector's Register and City Survey Plan. The Competent Authority of the Municipal Corporation of Greater Mumbai i.e. the Designated Officer-II, Assistant Engineer (Building & Factories) Dahisar R/North Ward, considered the said reply and by his order dated 19-3-2015 made the notice absolute and directed the Plaintiff to remove the unauthorised construction within 15 days from the receipt of the said order. A reading of the said order dated 19-3-2015 discloses that the Designated Officer has dealt with the documents on which reliance was placed on behalf of the Plaintiff. In so far as the copy of the Assessment Tax Bill is concerned, it is observed by the Designated Officer that the said document was verified by Assistant Assessor and Collector R/North Ward and that the said structure is assessed as Zavali shed prior to 1961-62. It is further observed that at present the notice structure is constructed of brick masonry walls and A.C. Sheet roof and that the document does not prove the existence of the notice structure prior to the datum line for tolerated structures i.e. 17-4-1964. The other document i.e. the Collectors Register, City Survey Plan, copy of the Property Register and copy of the Employment Card were also rejected by the Designated Officer, in so far as the case of the Plaintiff that

the structure was in existence prior to the datum line i.e. 17-4-1964 is concerned.

3 The Plaintiff on receipt of the said order dated 19-3-2015 passed by the Designated Officer filed the Suit in question being L. C. Suit No.862 of 2015. In the said Suit the Plaintiff filed a Notice of Motion for interim reliefs to restrain the Defendants i.e. the MCGM from demolishing the suit premises pursuant to notice dated 26-6-2014 and the order dated 19-3-2015. It seems that in the said Suit and the Notice of Motion that was filed the Respondent No.2 herein who claims to be the owner of the property sought to intervene and also filed an affidavit opposing the grant of reliefs sought by way of the said Notice of Motion. The said Notice of Motion was moved for ad-interim reliefs by the Plaintiff. The Learned Judge of the City Civil Court, Bombay by his order dated 1-4-2015 rejected the application for ad-interim relief. The Learned Judge considered the assessment extract produced on behalf of the Plaintiff and observed that the said assessment extract only proves that there was some structure in existence prior to 1960-61. However, the assessment extract itself discloses that the same was of zavalali shed i.e. the structure made of leaves of the palm tree. The Trial Court i.e. the Learned Judge of the City Civil Court, Bombay observed that the Plaintiff whilst seeking ad-interim relief was under obligation to produce valid permission under which the present structure of brick masonry walls and AC sheet roof was constructed. However,

having not produced any such permission, the Plaintiff had not made out case for grant of ad-interim relief and as indicated above has rejected the said application vide order dated 1-4-2015.

4 The Plaintiff aggrieved by the said order dated 1-4-2015 carried the matter to this Court by way of Appeal From Order St. No.9767 of 2015. It seems that in the said Appeal From Order the Plaintiff sought to rely upon the communication dated 4-6-1974 in support of his contention that the said structure was an unauthorised one and that the same has been constructed pursuant to the permission granted vide the said letter dated 4-6-1974 by the Assistant Engineer of the Municipal Corporation of Greater Mumbai. The production of the said document in the said Appeal From Order was opposed to on behalf of the Respondent No.2 herein as also the said document was sought to be disputed on behalf of the said Respondent No.2. Since the said document was not before the Trial Court whilst it adjudicated the application for interim relief, the Learned Single Judge of this Court did not deem it appropriate to consider the said document in the said Appeal from Order and observed that it was for the Plaintiff / Appellant to place such document for consideration of the Trial Court and seek relief on the basis of such material. To facilitate the filing of the said application the Learned Judge directed the parties to maintain status-quo for a period of two weeks and accordingly disposed of the Appeal by order dated 6-5-2016.

5 It is pursuant to the said order dated 6-5-2016 passed by the Learned Judge of this Court that the Plaintiff filed an additional affidavit and placed the said document dated 4-6-1974 on record and sought ad-interim relief which was refused by the Trial Court by its earlier order dated 1-4-2015. The Notice of Motion by then came to be numbered as 981 of 2015. The said affidavit was countered on behalf of the Respondent No.2 herein who filed his own affidavit and placed on record a copy of the circular dated 4-8-1967 which was issued by the Municipal Commissioner instructing the officers of the Municipal Corporation that repair permission should not be considered by the officers except the Executive Engineer, Building Proposals Department. In view of the fresh application for ad-interim reliefs made by the Plaintiff for ad-interim relief, the Trial Court considered the same and has now by the impugned order dated 20-5-2016 rejected the said application for ad-interim relief. The consideration of the fresh application was only revolving around the letter dated 4-6-1974 issued by the Assistant Engineer of the Municipal Corporation of Greater Mumbai. In view of the earlier adjudication which had taken place by the order dated 1-4-2015, the Trial Court was not required to consider the other material which had already been considered by the Trial Court whilst passing the said order dated 1-4-2015. In so far as the letter dated 4-6-1974 is concerned, the Trial Court i.e. the Learned Judge of the City Civil Court, Greater Mumbai adverted to the circular dated 4-8-1967 and having

regard to the fact that it is only the Executive Engineer Building Proposals Department who is empowered to grant repair permission, the Trial Court observed that the repair permission cannot be a proof of authorisation of notice structure and therefore came to a conclusion that prima facie it cannot be held that the notice structure could be protected having regard to the policy of the Corporation to tolerate the structures which are in existence prior to the datum line. As indicated above the Learned Judge has by the impugned order dated 20-5-2016 rejected the application for ad-interim relief.

6 In the context of the fact that on behalf of the Plaintiff i.e. the Appellant herein the Learned Counsel Mr. Desai sought to lay much store on the said letter dated 4-6-1974. It is required to be noted that the said letter talks about the repair permission granted to the addressee mentioned in the said letter. The Plaintiff has not produced any letter which is antecedent to the said letter dated 4-6-1974 granting permission to the Plaintiff to convert the zavalī shed i.e. shed made of the leaves of the palm tree into a permanent structure of brick masonry wall. It is also significant to note that though the Plaintiff claims on the basis of the said letter dated 4-6-1974, the same was not produced when the original application for ad-interim relief was moved and was produced for the first time in the earlier round in this Court i.e. in the Appeal From Order St No.9767 of 2015. It would have to be observed that the said letter does not inspire confidence, apart from the fact that it is

questionable in the light of the circular dated 4-8-1967 whether the Assistant Engineer could have issued such repair permission. The said letter is a stand alone letter which as indicated above is neither preceded with any permission granted or succeeded with any letter of the Plaintiff intimating the Municipal Corporation of Greater Mumbai that he has carried out the repairs in terms of the permission granted. In my view therefore, the impugned order dated 20-5-2016 does not warrant any interference in the Appeal from Order, the same is accordingly dismissed.

7 At this stage, the Learned Counsel for the Appellant prays for status-quo to be granted for a period of 4 weeks. In the facts and circumstances of the case, the parties are directed to maintain status-quo for a period of 4 weeks i.e. up to 5-7-2016.

8 In view of the dismissal of the above Appeal From Order, the Civil Application St. No.14907 of 2016 does not survive and to accordingly stand disposed of as such.

[R.M.SAVANT, J]