

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

APPEAL FROM ORDER STAMP NO.15067 OF 2016

ALONGWITH

CIVIL APPLICATION STAMP NO.15068 OF 2016

IN

APPEAL FROM ORDER STAMP NO.15067 OF 2016

Mr. Nandkumar Aba Gavkar

.. Appellant/Applicant

Versus

The Estate Officer, MHADA and others

.. Respondents

Mr. Rakesh Kumar a/w Mr. V. S. Jabra for the Appellant/Applicant.

Mr. S. P. Thorat for the Respondent No.1.

Mr. S. S. Redekar for the Respondent No.2.

CORAM : R.M. SAVANT, J.

DATE : 21st JUNE 2016

PC.

1. The above Appeal from Order has been filed challenging the order dated 05.05.2016 passed by the Learned 2nd Additional Principal Judge, City Civil Court, Mumbai, by which order, the Notice of Motion filed by the Appellant herein being No.756 of 2016 came to be dismissed.

2. The Appellant is the original Plaintiff who has filed the suit in question being SC Suit No.285 of 2016 and the substantive relief sought therein is by way of prayer clause (a) which is to the effect that the

Respondent Nos.1 and 2 be restrained from dispossessing the Plaintiff from the suit premises i.e. Room No.203, Second Floor, Mukti Co-operative Housing Society Ltd., Bawla Compound, Dattaram Landmark, Chinchpokli, Mumbai-400 012 without following the due process of law. By an amendment the Plaintiff has incorporated prayer clause (a)(1) to challenge the notice dated 02.01.2016. The grievance of the Plaintiff was that the Plaintiff has not been heard and that without hearing the Plaintiff, he is sought to be evicted from the suit premises. The ad-interim reliefs were refused to the Plaintiff in the earlier round which resulted in the Plaintiff filing Appeal from Order No.182 of 2016. The said Appeal from Order came to be allowed. The order passed by the City Civil Court refusing ad-interim reliefs came to be set aside and the ad-interim reliefs came to be granted to the Plaintiff pending the consideration of the Notice of Motion filed by the Plaintiff. By the impugned order dated 05.05.2016, the said Notice of Motion has been dismissed by the Learned 2nd Additional Principal Judge of the City Civil Court, Mumbai.

3. After the Notice of Motion came to be dismissed, the Respondents herein i.e. the Mumbai Repairs and Reconstruction Board (“MBRRB” for short) has issued a notice under Section 95A(3) of the MHAD Act, 1976. The said notice calls upon the Plaintiffs as to why proceedings to evict them from the premises should not be adopted as also

calls upon the Plaintiffs to justify as to on what basis they are occupying the premises. It seems that pursuant thereto the Executive Engineer, 'F-South' Ward of the MBRRB has made the notice absolute and has passed order dated 31.05.2016 directing the Plaintiffs to hand over possession of the premises to the MBRRB, failing which coercive steps would be taken to obtain possession. The said notice and the said order dated 31.05.2016 have been challenged by the Plaintiffs by way of Writ Petition Stamp No.148 of 2016 filed on the Original Side of this Court.

4. The Learned Counsel appearing on behalf of the Appellant herein i.e. the original Plaintiff No.2 on instructions of the Appellant Mr. Nandkumar Aba Gavkar who is personally present in Court makes a statement that the Plaintiffs would withdraw the Notice of Motion filed by them being No.756 of 2016 in the City Civil Court so as to pursue the Writ Petition filed by them on the Original Side of this Court. In view of the said statement, the Notice of Motion to stand withdrawn. In view thereof, the impugned order dated 05.05.2016 passed in the Notice of Motion need not be considered on merits. The same to accordingly stand set aside. The above Appeal from Order has consequently turned infructuous and to accordingly stand disposed of as such.

5. Needless to state that the withdrawal of the Notice of Motion

would not be an impediment for the Plaintiffs to apply for interim reliefs in the Writ Petition filed by them in this Court, challenging the order passed under Section 95A(3) of the MHAD Act, 1976. The contentions of the parties in that respect are kept open for being urged before the appropriate Court.

6. 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]