

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

APPEAL FROM ORDER STAMP NO.17696 OF 2015

Deepak Nagoji Rane : Applicant.
Versus
The Mumbai Municipal Corporation and anr. : Respondents.

Mr. R K Yadav for the Applicant.
Mrs. M R Bhoir for the Respondents.

CORAM : R. M. SAVANT, J.
DATE : 06th June 2016

P.C.

1 Not on board. The delay in filing the above Appeal from Order has been condoned by an order passed today i.e. on 06th June 2016 in Civil Application No.1042 of 2015 and by the consent of the learned counsel for the parties, the above Appeal from Order is taken up for hearing along with the companion matter being Appeal from Order No.538 of 2015.

2 The above Appeal from Order takes exception to the order dated 09/03/2015 passed by Trial Court i.e. the learned Judge of the City Civil Court, Greater Bombay by which order the Trial Court has refused to grant ad-interim relief to the Appellant.

3 The Appellant – original Plaintiff has been served with a notice dated 16/07/2014 under Section 351 of the Mumbai Municipal Corporation

Act alleging carrying out of unauthorized construction by him as mentioned in the said notice. The unauthorized construction which is alleged against the Appellant in the notice is inter-alia the construction of 1] brick masonry wall thereby dividing the verandah in two parts; 2] creation of rolling shutters on 2 sides of the wall by breaking the existing B.M. Walls; 3] erection of partition wall of plywood material; 4] construction of loft with I section ladi coba slab admeasuring 2.80 m x 1.40 m. 5] enclosure of window between verandah and room no.16 by constructing B.M. Wall ; and 6] change of user from residential to commercial at the address of the said premises. The Appellant replied to the said notice pursuant to which the Competent Authority of the Municipal Corporation for Greater Mumbai ("MCGM" for short) passed an order dated 09/02/2015 rejecting the contentions raised on behalf of the Appellant and thereby making the notice issued under Section 351 absolute and directing the Appellant to remove the offending construction.

4 The Appellant filed the instant suit being L C Suit No.539 of 2015. In the said suit the Appellant had filed Notice of Motion No.892 of 2015 in which Motion by an order dated 20/02/2015 ad interim reliefs were refused to the Appellant by the Trial Court. It seems that after the order dated 20/02/2015 came to be passed the Applicant/Appellant was provided the assessment extract and inspection note by the office of the Asstt. Assessor & Collector / D Ward of the MCGM.

5 Armed with the said documents, the Appellant filed the instant Notice of Motion No.982 of 2015 and the relief claimed was that the Appellant i.e. the Plaintiff be granted leave to file a fresh Notice of Motion without prejudice to the his rights and contentions in Notice of Motion No.892 of 2015 and that the Respondent MCGM should be directed to decide the representation dated 25/02/2015 filed by the Applicant without prejudice to the rights and contentions of the Appellant in Appeal from Order stamp No.5109 of 2015 arising out of the order dated 20/02/2015. The said Notice of Motion No.982 of 2015 which as indicated above was the subsequent motion was rejected by the Trial Court by the impugned order dated 09/03/2015. The Trial Court i.e. the learned Judge of the City Civil Court, Greater Bombay has adverted to the fact that in the earlier Motion being Notice of Motion No.892 of 2015 the ad interim reliefs were refused. The Trial Court also observed that the assessment extract as well as the inspection note would not aid the Plaintiff as they do not relate to the additions and alterations which were carried out to the original structure which additions and alterations are part of the allegations made in the notice dated 16/07/2014. The Trial Court has also adverted to the fact that the Competent Authority of the MCGM whilst passing the order dated 09/02/2015 has considered the said material.

6 In the course of the hearing of the above Appeal, the learned

counsel for the Appellant Shri Yadav once again sought to lay emphasis on the assessment extract and inspection note. In so far as the assessment extract is concerned, in the letter dated 21/02/2015 issued by the Asstt. Assessor & Collector, D Ward of the MCGM which letter is at page 62 of the paper book compilation, it has been clarified that the first date of assessment is pertaining to the original structure and not applicable to the subsequent additions/alteration if any. Precise allegation against the Appellant is of carrying out additions and alterations to the original structure to the extent mentioned in the notice dated 16/09/2014 issued under Section 351 of the Act. The assessment extract and inspection note therefore are not the documents which can be said to aid the Appellant to substantiate his case that the additions and alterations which have been alleged in the said notice were in existence right from the beginning. At the ad-interim stage, in the absence of any material to indicate that the said unauthorized construction alleged against the Appellant was existing right from the inception and is therefore required to be protected, the Trial Court was right in rejecting the application for ad interim relief.

7 In my view, therefore, no case for interdiction at the hands of this Court is made out. The above Appeal from Order is accordingly dismissed.

[R.M.SAVANT, J]