

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER St.NO.18341 OF 2016
WITH
CIVIL APPLICATION St.NO.18343 OF 2016**

Fatima Shabbir Sayyed	..Appellant
Vs.	
The Municipal Corporation of Greater Mumbai &Anr	..Respondents

Mr. Kartik I Khandelwal i/b Khandelwal & Associates for the Appellant / Applicant
Mrs Madhuri More for the Respondent No.1

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

P.C.

1 The order dated 8-6-2016 passed by the Learned Judge of the City Civil Court, Greater Mumbai rejecting the Notice of Motion No.4779 of 2015, is taken exception to by way of the above Appeal From Order.

2 The Plaintiff had filed the Suit in question being L.C Suit No.2905 of 2015 on an apprehension that the structure of the Plaintiff would be demolished. In the said Suit the Plaintiff filed the instant Notice of Motion No.4779 of 2015 inter alia seeking relief of restraining the Defendants from forcibly demolishing the suit premises which is a hut and restraining the Defendants from disturbing the possession of the Plaintiff in the suit premises. It appears that the Plaintiff has his structure in the bay area leading to the Haji

Ali Dargah at Worli. It is the case of the Plaintiff that he is in use and occupation of the premises being Room No.54 admeasuring 25 X 20 sq.ft. It is also the case of the Plaintiff that the said premises are in existence for a long time. It is the case of the Plaintiff that he is carrying out cutlery business in the said premises. It appears that on behalf of the State authorities i.e. the Deputy Collector (Encroachment / Removal) Mumbai, photographs were produced before the Trial Court which indicate that the suit premises are a hut or a stall of bamboo erected in the bay leading to the Haji Ali Dargah.

3 The Trial Court tested the Plaintiff's case as regards the existence of the structure, the Trial Court held that the documents produced by the Plaintiff are in respect of a stall and not Room No.54 which is the premises mentioned in the documents produced by the Plaintiff. The Trial Court has also adverted to the order passed in Writ Petition No.478 of 2016 dated 31-5-2016 on which order this Court had directed the Deputy Collector (Encroachment /Removal) the unauthorised construction made in the vicinity of Haji Ali Dargah. The Trial Court therefore was of the view that no interim relief by way of prayer clauses (a) and (b) of the Notice of Motion could be granted and accordingly dismissed the Notice of Motion by the impugned order dated 8-6-2016. It seems that the Deputy Collector (Encroachment / Removal) Colaba Division has passed an order on 31-5-2016 under Section 50(3) of the Maharashtra Land Revenue Code directing the Plaintiff to remove

the structure in question as otherwise action would be taken for removal of the same if not removed within the time frame mentioned in the said letter. Against the said letter dated 31-5-2016 the Petitioner had filed a Review Petition before the Deputy Collector (Encroachment / Removal) which has been rejected by order dated 20-6-2016 which is marked as Exhibit H to the above Appeal From Order. Hence the Deputy Collector, (Encroachment / Removal) has also passed an order on the basis that the structure is unauthorised.

4 In my view therefore, no case for interference in the Appellate Jurisdiction of this Court is made out, the Appeal From Order is accordingly dismissed.

5 However, it would be open for the Appellant to adopt such proceedings as are permissible in law to challenge the notice dated 31-5-2016 or the order dated 20-6-2016 passed by the Deputy Collector (Encroachment / Removal)

6 In view of the dismissal of the above Appeal From Order, the Civil Application st. No.18343 of 2016 does not survive and to accordingly stand disposed of as such.

[R.M.SAVANT, J]