

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER ST.NO.18703 OF 2016
WITH
CIVIL APPLICATION ST.NO.18705 OF 2016**

Ajay Ramchandra Salagaonkar

..Appellant

Vs.

The Municipal Corporation of Greater Mumbai

..Respondent

Mr. S. S. Shah i/b Mr. S. V. Gole for the Appellant

Mrs. M. R. Bhoir for the Respondent

CORAM : R. M. SAVANT, J.

DATE : 14th JULY, 2016

P.C.

1 The above Appeal from Order takes exception to the order dated 16-6-2016 passed by the Learned Judge of the City Civil Court, Mumbai, by which order, the Notice of Motion filed by the Appellant / original Plaintiff came to be dismissed.

2 The Suit in question filed by the Appellant / Plaintiff has arisen on account of the notice issued under Section 351 of the Mumbai Municipal Corporation Act (MMC Act) dated 13-4-2015 and the order dated 4-6-2015 and 26-10-2015 passed by the Designated Officer of the Mumbai Corporation of Greater Mumbai (MCGM) considering the reply filed by the Plaintiff and thereafter making the notice absolute. The notice has been addressed to the occupier one Pravin Jain who is running Kismat Mobile Stores in the said

unauthorised construction. It is alleged in the said notice that the Plaintiff has put up unauthorised construction consisting brick masonry walls and mezzanine floor by using M. S. Angle frame and Ladi Coba Slab on it admeasuring areas of 3.20mt x 5.20mt. Having height of 2.40mt. and also constructed shed above ground floor by using G. I. Sheet and M. S. Pipes having average height of 1.30mt. as shown in the sketch which is shown by the side of the notice. In view of the notice being confirmed by the Designated Officer of the MCGM that the Suit in question came to be filed by the Plaintiff. The legality and validity of the notice issued under Section 351 as also the order passed pursuant thereto is questioned in the Suit. In the said Suit, the Plaintiff filed Notice of Motion being No.2138 of 2016 for an injunction restraining the MCGM from acting upon the notice in the matter of demolishing the structure. The Plaintiff it seems had applied for ad-interim reliefs. The Trial Court had rejected the application for ad-interim reliefs pursuant to which the Plaintiff had filed an Appeal From Order in this Court. A Learned Single Judge of this Court by order dated 12-1-2016 had granted ad-interim reliefs in terms of prayer clause (a) of the Notice of Motion. This relief was granted having regard to the rival contentions which were revolving around the identity of the unauthorised structure. The Learned Judge was of the view that it would be appropriate if the notice structure is protected till the disposal of the Notice of Motion. The instant Notice of Motion was thereafter taken up for hearing, prior thereto an affidavit in reply came to be filed on

behalf of the Mumbai Corporation of Greater Mumbai. In the said affidavit in reply it has been stated that the notice is not in respect of shop No.7-7A but is in respect of a structure which is outside the Prabhu Building. The parties produced documents in support of their respective assertions. The Plaintiff in support of his case that the structure was in existence prior to the datum line 1-4-1962 had produced the rent receipts issued by the landlord which were in respect of the shop No.7-7A, the assessment extract issued by the Municipal Corporation in respect of the said shop. For the sake of clarity, the Trial Court notified the shop situated in Prabhu Building as shop No.A wherein the Plaintiff is running a medical store in the name and style of Shravani Medical and identified the unauthorised shop as structure B. The parties also produced photographs in support of their respective assertions. It seems that when the Junior Engineer of the MCGM visited the site in question, the name board over structure B i.e. the Shop wherein Sharvani Deepak Electronic and Mobile Stores is being run, was it seems having the board "Kismat Mobile Stores" . However, in the photographs annexed to the above Appeal From Order which are produced by the Plaintiff, the board Kismat Mobile Stores seems to have been removed and the sheet having the name Sharvani Deepak Electronic and Mobile Stores seems to have been pasted on the board. The photographs as well as the hand drawn map produced by the Plaintiff discloses that after the Sharvani Medical Stores there is a "house galli" and after the house galli there is the alleged unauthorised construction of the shop which has the name board

of Sharvani Deepak Electronic and Mobile Stores. It is the specific allegation of the MCGM that the notice is in respect of the structure which is beyond the Prabhu Building. Hence the house galli separates the Prabhu Building and the unauthorised construction by way of the said shop. The house gallis are a characteristic of South Mumbai and are usually situated in between two buildings or the after the building come to an end. In the house gallis the sewerage / drainage openings of the buildings are located. In the instant case as indicated above the notice structure is beyond the house galli and therefore it would have to be taken to be outside the property known as Prabhu Building.

3 On behalf of the Plaintiff emphasis is sought to be laid on the rent receipt issued by the landlord in the year 1959 which is in respect of shop No.7-7A as also the assessment extract which is also in respect of shop No.7-7A. The said documents are sought to be relied upon to contend that shop No.7-7A are two separate shops and shop No.7A is infact the shop which is the notice structure. It is sought to be contended on behalf of the Plaintiff that since the rent receipt is the evidence of the fact that the shop is in existence since the year 1959, the same being prior to the datum line is required to be protected. In so far as the said aspect is concerned, the Trial Court has observed that the Plaintiff is trying to take advantage of the documents relating to shop No.7-7A to contend that there are two shops and thereby is

seeking to protect the structure -B which is the unauthorised construction. A perusal of the assessment extract discloses that what is mentioned therein is shop No.7-7A and not shops. The assessment extract can therefore be said to be of one shop and not shops.

4 In my view, having regard to the fact that Sharvani Medical Stores is situated in Prabhu Building the rent receipt can be said to be referable to the shop in the Prabhu Building and not the notice structure. Since the notice structure is beyond the house galli, it is questionable whether the landlord could have issued a rent receipt in respect of the a structure which is beyond his property. It is pertinent to note that no document is produced to show that the notice structure is part of the property known as Prabhu Building. As indicated above, it seems that when the Junior Engineer of the MCGM went to take inspection of the unauthorised construction and took photographs, the shop i.e. the unauthorised construction was having the name board of Kismat Mobile Stores but significantly it seems that the name has been changed to Sharvani Deepak Electronic and Mobile Stores, as otherwise there was no reason as to why a part of the board is now blank as seen in the photograph at page 107 of the Appeal compilation. This fact lends credence to the suspicion that the documents in respect of shop Nos.7-7A which is one shop are sought to be utilised to justify the existence of the unauthorised construction that is put up beyond the house galli. Significantly not a single document has been

produced which indicate that there were two shops i.e. shop No.7 and shop No.7A. The Trial Court has therefore in my view correctly adjudicated the Notice of Motion by numbering the shops as structure A and structure B being the unauthorised construction. Having regard to the case of the MCGM that the structure B is outside the Prabhu Building there can be no dispute about the identity of the structure. As indicated above, the structure is also beyond the house galli which adjoins the Prabhu Building.

5 In my view therefore, no case for exercise of the Appellate Jurisdiction of this Court is made out. The Appeal From Order is accordingly dismissed.

6 In view of the dismissal of the above Appeal From Order, the Civil Application St. No.18705 of 2016 does not survive and to accordingly stand disposed of as such.

[R.M.SAVANT, J]