

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

APPEAL FROM ORDER NO.691 OF 2016

DCB Bank Limited. .. Appellant
Vs.
Mira Bhayander Municipal Corporation & Ors. .. Respondents

Mr. Rajesh Patil i/b Mr. Vikram Singh Yadav for Appellant.
Mr. N. R. Bubna for Respondent No.1.
Mr. Raju Suryavanshi for Respondent No.3.

CORAM : R.D. DHANUKA, J.
DATE : 18th August 2016

P.C.

. By this appeal from order, the appellant has impugned the order dated 29th April 2016 passed by the 8th Joint Civil Judge, Senior Division, Thane dismissing the application filed by the appellant (original plaintiff) under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908.

2. It is the case of the appellant that the appellant had purchased the suit property from the respondent no.2 and accordingly, the Memorandum of Understanding was executed on 13th November 1995 for total consideration of Rs.1,43,00,000/-.

3. The Municipal Corporation had issued a notice and threatened the appellant to demolish the suit property in the year 1999. This Court had initially granted interim relief in Writ Petition

No.3219 of 1999 filed by the appellant on 9th June 1999 and it was confirmed on 13th October 1999. During the pendency of the said writ petition, the Municipal Corporation issued a notice under Section 260 of the Bombay Provincial Municipal Corporation Act (BPMC Act). The appellant replied to the said notice and produced several documents for consideration of the Municipal Corporation. The Municipal Corporation however rejected the contentions raised by the appellant and passed an order against the appellant. The appellant, thereafter, filed a suit before the learned trial Judge and impugned the notice as well as the order passed by the authority.

4. Learned counsel appearing for the appellant invited my attention to various points for determination by the learned trial Judge and also various findings recorded by the learned trial Judge. He submits that though the learned trial Judge has prima facie held that the appellant had made out a prima facie case and balance of convenience was in favour of the plaintiff, the learned trial Judge refused to grant interim injunction.

5. I have perused the impugned order passed by the learned trial Judge and the annexures to the appeal memo. I am of the prima faice view that the notice issued by the Municipal Corporation under Section 260 of the BPMC Act alleging unauthorised construction of the appellant was illegal. The appellant had produced several documents on record to make out prima facie case before the Municipal Corporation and also before the learned trial Judge. The balance of convenience was in favour of the appellant.

6. In my view, the appellant had made out a case for grant of interim injunction. The impugned order passed by the learned trial Judge shows inconsistency in the reasons recorded by the learned trial Judge.

7. I therefore pass the following order :-

- (a) The impugned order dated 29th April 2016 passed by the learned trial Judge is set aside;
- (b) Application filed by the appellant for grant of injunction is allowed;
- (c) It is made clear that the appellant shall not carry out any construction without permission of the Municipal Corporation during the pendency of the suit;
- (d) Appeal is allowed in aforesaid terms;
- (e) In view of disposal of the appeal, civil application does not survive and is accordingly disposed of;
- (f) There shall be no order as to costs;
- (g) Hearing of the suit is expedited.

R.D. DHANUKA, J.