

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.647 OF 2016
ALONGWITH
CIVIL APPLICATION NO.828 OF 2016

Mr. Gulam Irfan Shaikh

.. Appellant

Versus

The Municipal Corporation of Gr. Mumbai

.. Respondent

Mr. R. P. Ojha i/by Mr. A. K. Singh for the Appellant.

Mrs. M. R. Bhoir for the Respondent BMC.

CORAM : R.M. SAVANT, J.

DATE : 14th JULY 2016

PC.

1 The above Appeal from Order takes exception to the order dated 27.06.2016 passed by the Learned Judge of the City Civil Court, Greater Mumbai, by which order, the Notice of Motion filed by the Appellant/original Plaintiff came to be rejected.

2 The Plaintiff was issued with a notice under Section 354A of the Mumbai Municipal Corporation Act (For short “the MMC Act”) dated 07.04.2010 in respect of the ongoing unauthorized construction of putting up a structure. By the said notice, the Appellant was asked to stop the said work. The Plaintiff thereafter filed the instant suit apprehending that the

said structure would be demolished. The Plaintiff in the suit filed the instant Notice of Motion for interim reliefs pending the suit. The Municipal Corporation of Greater Mumbai (For short “the MCGM”) filed its reply to the said Notice of Motion and contended that the structure has been demolished by the Corporation from time to time. It was pointed that a notice under Section 351 of the MMC Act was issued to the landlord on 20.11.1998 and the structure was demolished by the Corporation. It is the case of the MCGM that though the structure was demolished but the Plaintiff was again trying to put up the said structure. Before the Trial Court the Plaintiff relied upon various documents which are pertaining to the year 2000-2002 and which related to the alleged previous owner from whom the Plaintiff claims to have acquired the said structure. Significantly, the Plaintiff did not produce any document regarding the authorisation of the said structure or any document to show that even in the year 1998 post the demolition of the structure, the same was in existence.

3 Hence, the instant case appears to be a case where after the demolition of structure is carried out an attempt is made to re-erect the structure. The MCGM in its affidavit in reply has referred to the complaint received from the landlord as regards the unauthorized construction being put up in the land adjoining his property. In my view, having regard to the

facts as aforesated, the order passed by the Trial Court rejecting the Notice of Motion cannot be found fault with. No case for interference is made out. The Appeal from Order is accordingly dismissed.

4 In view of the dismissal of the Appeal from Order, the Civil Application does not survive and to accordingly stand disposed of.

5 At this stage, the Learned Counsel appearing for the Appellant prays for continuation of the protection granted by the Trial Court. In the facts and circumstances of the case, the said protection is refused.

[R.M. SAVANT, J]