

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

**FIRST APPEAL NO.1467 OF 2013
WITH
CIVIL APPLICATION NO.3879 OF 2013
IN
FIRST APPEAL NO.1467 OF 2013**

Mrs. Kausarbanoo d/o Mohd. Abdul SattarAppellant
vs.
Municipal Corporation of Greater Mumbai ...Respondent

Mr. Anand Mishra i/b Mr. A. M. Saraogi for the Appellant.
Mr. Ram U. Singh for Respondent No.2.
Mrs. M. S. Bhoir for Respondent No.1/BMC.

**CORAM: G.S.KULKARNI, J.
DATE: 1st DECEMBER, 2016.**

P.C.:-

. Admit.

2. By consent of the parties taken up for final hearing.

3. The First Appeal is directed against an order dated 28/6/2013 passed by the Learned Judge, City Civil Court, Dindoshi, Borivali Division, Mumbai in L.C. Suit No.474/2008 whereby the suit came to be disposed of on the consent given by the parties. The impugned order is a short order and reads thus:

“Heard advocate for Plaintiff and defendants. The suit is for direction to the Corporation not to demolish the suit structure without following due process of law. There is some dispute in respect of structure between Plaintiff and defendant No.2. Both the claiming rights in the first floor of the structure. Advocate for Defendant No.2 submitted that a separate suit bearing No.1554 of 2010 is filed by the Defendant No.2 against the plaintiff for declaration of his rights in first floor of the

structure. It is a fact that neither first floor is there nor ground floor as on today, as well as on the date of filing of report of the Court Commissioner (Exh.13). In these circumstances, advocates of concerned parties submitted that the suit can be disposed of by directing the Corporation not to demolish whatever the structure is there at the site without following due procedure prescribed in M. M. C. Act.

2. It reveals from the Commissioner's report that there are only wall at the suit site and rest of the structure is already demolished. In view of this, the suit is disposed of with following order.

ORDER

“1. The Corporation shall not demolish the structure described in the Commissioner's Report Exh.13 and shown in 3 photographs appended to the Commissioner's Report without following procedure prescribed by law.

2. Parties to bear their own costs.

3. Record shows that draft N/M was filed by Defendant No.2 and it was allowed and was ordered to register it for statistical purpose and the motion is shown pending in CHS under No.2465/12. Defendant No.2 has not tendered the motion after registration. Motion pending CTS shall stands disposed of.

4. Decree be drawn up accordingly.”

4. The only grievance as urged on behalf of the Appellant is to the observation as made in the impugned order to the following effect.

“It is a fact that neither first floor is there nor ground floor as on today, as well as on the date of filing of report of the Court Commissioner (Exh.13).”

5. It is being urged on behalf of the Appellant that the above observations would adversely affect the Appellant in pursuing any remedy before the appropriate authority.

6. It appears that the above observations have been made on the basis of report of the Court Commissioner Exh.13 and not on the basis of some other independent material. The parties agree to this position and that there is no other material and in all probability, the observations are made on the basis of report of the Court Commissioner only. Admittedly, the suit was disposed of on the consent of the learned advocates of the concerned parties being accepted by the Court that the Corporation shall not demolish the structure whatever it remains.

7. Be that as it may, the apprehension of the Appellant even if it is accepted to be correct, in my opinion the same would not in any manner cause prejudice to the Appellant and even for that matter to the respondent, in as much as the report of the Court Commissioner which is on the record of the Suit, would speak of the existing condition of the suit structure. None of the parties to this proceedings have challenged the report of the Court Commissioner and, therefore they are free to make appropriate submissions before any authority if they so desire in that regard. The impugned order has protected the existing structure as it stands and as reflected in the report of the Court Commissioner. It would be open to the parties to place reliance on the report of the Court Commissioner in any appropriate proceedings. All contentions of the parties in that regard are kept open.

8. First Appeal is accordingly disposed of in the above terms without in any manner disturbing the impugned judgment and order passed by the learned Trial Judge except subject to the above

clarification.

9. In view of disposal of First Appeal, Civil Application No.3879/2013 does not survive and is accordingly disposed of.

(G.S.KULKARNI, J.)