

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

**APPEAL FROM ORDER STAMP NO.19571 OF 2016
ALONGWITH
CIVIL APPLICATION STAMP NO.19572 OF 2016**

Mrs. Kailashi Lalu Kevat

.. Appellant

Versus

Mumbai Municipal Corporation

for Greater Mumbai and another

.. Respondents

Mr. R. U. Singh for the Appellant.

Mrs. M. R. Bhoir for the Respondents.

CORAM : R.M. SAVANT, J.

DATE : 25th JULY 2016

PC.

1 The above Appeal from Order takes exception to the order dated 29.06.2016 passed by the Learned Judge of the City Civil Court, Borivali Division, Dindoshi, Mumbai, by which order, the Notice of Motion filed by Appellant/original Plaintiff came to be dismissed. The Plaintiff's structure was coming within the road widening which was to be undertaken. The Plaintiff was therefore issued with a notice dated 08.10.2015 calling upon her to submit documents to show that her structure was in existence prior to 01.01.1995. The Plaintiff submitted as many as twelve documents. The Assistant Commissioner K/West Ward of the MCGM passed an order dated 08.10.2015 whereby the Plaintiff was

held to be disentitled to the allotment of permanent alternate accommodation since the Plaintiff's husband has already been allotted permanent alternate accommodation in the scheme of rehabilitation applicable to the project affected persons of the MCGM. This resulted in the Plaintiff filing the suit in question and filing the instant Notice of Motion for injunctioning the Respondents from evicting her from the suit structure. The said Notice of Motion was considered by the Learned Judge of the City Civil Court who by the impugned order has dismissed the same. The Learned Judge of the City Civil Court in the impugned order has adverted to the documents produced on behalf of the Plaintiff which is the voter's list which is before the divorce between the Plaintiff and her husband and therefore the residential address shown is the same. The other documents are post 01.01.2000, and since the Plaintiff was residing with her husband in one structure as evidenced by the voters list as on 01.01.1998 the Trial Court held that the Plaintiff is not entitled for any reliefs in the Notice of Motion.

2 The Learned Counsel appearing on behalf of the Appellant/original Plaintiff would once again endeavour to point out to this Court that the Plaintiff's structure was different than the structure in respect of which allotment was made to her husband. It was sought to be contended that since the Plaintiff and her husband are divorced they

cannot be said to be family members, and therefore the Plaintiff is entitled to an independent allotment.

3 As indicated above, the Plaintiff has placed reliance on the documents on the basis of which the allotment of permanent alternate accommodation is made to the husband. The Deed of Divorce dated 25.06.1998 nor the Consent Petition filed by the Plaintiff and her husband in the Family Court on 15.04.2015 show that their addresses are different or they are residing in different rooms. The reason why the Trial Court has rejected the interim reliefs sought by the Appellant is on the ground that the husband of the Plaintiff has been held eligible for alternate accommodation and the Plaintiff failed to prove that her structure at Sr.No.51 of Annexure II is eligible for alternate accommodation. Prima-facie the documents i.e. the Deed of Divorce and the Consent Divorce Petition do not inspire confidence and seem to have been created so as to make the Plaintiff eligible for allotment of one more tenement though her husband has already been allotted a tenement. Hence, even assuming that the Plaintiff had a separate structure than her husband, she cannot be entitled to another alternate accommodation as the object of the said scheme is rehabilitation and not profiteering or self aggrandizement. In my view, therefore, 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 for the Appellant seeks continuation of the protective order granted by the City Civil Court. In the facts and circumstances of the case, where the structure is coming within the road widening the said prayer is refused.

[R.M. SAVANT, J]