

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

APPEAL FROM ORDER NO. 526 OF 2014

WITH

CIVIL APPLICATION NO. 93 OF 2015

AND

CIVIL APPLICATION NO. 1012 OF 2014

IN

APPEAL FROM ORDER NO. 526 OF 2014

Mohan Singh Jagat Singh Dhami

...Appellant

Versus

**The Municipal Corporation of Greater
Mumbai & Anr.**

...Respondents

Ms. Bhavna Anklesaria, for the Appellant.

Ms. Reena Salunkhe, i/b P.R. Lalchandani, for the Applicant in
CAA/1012/14.

Ms. Madhuri More, for Respondent No. 1-MCGM.

Mr. Chetan C. Agarwal, a/w Ms. Shrishti Agarwal, for the
Respondent No. 2

CORAM : G.S. KULKARNI, J.

DATE : 6th December 2016

ORDER :

1. This Appeal is directed against an order dated 1st March 2014 passed by the learned Judge, City Civil Court, Bombay in Notice of Motion No. 1822 of 2011 in L.C. Suit No. 1733 of 2012, whereby the Notice of Motion as taken out on behalf of the Respondent No. 2/Plaintiff was made absolute in terms of prayer clause (a) of the Notice of Motion, which reads thus:-

“That pending the hearing and final disposal of the suit, this Hon'ble Court be pleased to pass temporary order and injunction restraining the Defendants from taking any action against the Plaintiff in respect of the suit premises i.e. Plot No. “C” situated at dr. Gidwani Road, Chembur, Mumbai – 74, in furtherance of the said 53(1) Notice being Exhibit “J” and exhibit “L” hereto.”

Therefore, this Appeal filed by the Appellant/Defendant No. 2.

2. The issue in the Suit is as regards the issuance of a notice by the Municipal Corporation under Section 53(1) of the M.R.T.P. Act issued to one Shalimar Auto Services regarding certain unauthorised work as stated in the schedule to the said notice. From

the pleadings of the parties before the Trial Court and perusal of the impugned order, it is quite apparent that there is a dispute between the two brothers namely the Appellant/Defendant No. 2 and Respondent No. 2/Plaintiff. It is stated that the Appellant and Respondent No. 2 are partners in a business which is undertaken in the name and style of Shalimar Auto Service and Jagatsingh and Sons. It is stated that the partnership is dissolved and disputes between the parties are subject matter of a reference before a Sole Arbitrator.

3. By the impugned order, a temporary injunction has been granted in terms of prayer clause (a) as stated above in respect of the notice dated 7th May 2012 issued by the Municipal Corporation under Section 53(1). This Court in its order dated 27th July 2015 in paragraph 3 observed under :-

“The main contention of the advocate for defendant no.2 is that, pursuant to the notice under section 53(1) of the Maharashtra Regional and Town Planning Act, 1966 dt. 7.5.2012 issued by the defendant Corporation, plaintiff failed to file any application for regularisation. He submits that the Trial Court in paragraph 9 of the impugned order

referred the application dated 28.9.2012 filed by the plaintiff through their Architect M/s.Viraj Associates for regularisation of the alleged unauthorized construction. Corporation is directed to file affidavit within one week explaining whether the said application dated 28.9.2012 is filed by the plaintiff or not and whether that application is decided by the them.”

In pursuance of the above order, on behalf of the Municipal Corporation an Affidavit of Shri. Ramesh N. Kulkarni, Assistant Engineer (B.P) E.S., has been filed *inter alia* stating that a diligent search was carried out by the Department and it is revealed from record of the office of the Building Proposal Department (ES) from the entries from the inward register maintained in the office that Viraj Associates had submitted proposal for the regularization of said premises dated 28th September 2012 and 29th October 2012. It is stated that however, original copy of the said proposal could not be traced out and that the Building Proposal Department has not granted any approval on the said application/proposal. It was therefore, stated that if copies of the application are provided to the Building Proposal Department (E.S.), the same can be considered as

per D.C. Regulations.

4. On this background, this Appeal was heard today. The learned Counsel for the Respondent No. 2 on instructions states that the Respondent No. 2 is agreeable to furnish copies and or file a fresh regularization application seeking regularization of unauthorised construction being the subject matter of the Notice dated 7th May 2012 issued by the Municipal Corporation under Section 53(1) of the M.R.T.P. Act. He states that Respondent No. 2 shall submit such an application within a period of three weeks from today. Considering the above facts of the case, the submission deserves to be accepted and more so when an earlier regularization application was filed by Respondent No. 2 as noted above.

5. It is therefore directed that if such an application is made within a said period of three weeks on behalf of the Respondent No. 2, then the Respondents shall consider the said application in accordance with law and decide the same within a period of five weeks thereafter.

6. The Respondent No. 2 shall submit such proposal to the Executive Engineer Building Proposal Department (Eastern Suburbs). The learned Counsel for the Respondent No. 2 shall also furnish a

copy of the same to the contesting party namely Appellant and the owners of the land the intervenor in this Appeal. The designated authority shall hear all the concerned parties and pass an appropriate order on the said representation proposal/application of Respondent No. 2.

7. The Appellant and Respondent No. 2 agree that all contentions of the Appellant and Respondent No. 2 on the other issues relating to the partnership dispute are kept open as they are already the subject matter of the arbitration proceedings.

8. In the meantime, till the regularization proposal is made as observed above, the Respondent-Municipal Corporation shall not take any coercive action against the unauthorised structure being the subject matter of the notice issued on 7th May 2012 under Section 53(1) of the M.R.T.P. Act. Needless to observe that if the Respondent No. 2 fails to make an application within a period of three weeks, the Respondent-Corporation would be free to take appropriate action under the said notice in question. If in case an order adverse to Respondent No. 2 is passed on the regularization application, the Corporation shall not take any coercive action for further period of two weeks after the date of communication of the said order.

9. In view of the above arrangements, the learned Counsel for Respondent No. 2 on instructions seeks leave to withdraw L.C. Suit No. 1733 of 2012. Accordingly, Respondent No. 2 is permitted to withdraw the said Suit and the Suit stands disposed of as withdrawn.

10. The above Civil Applications would also not survive and are also accordingly, disposed of.

11. The office is directed to forward copy of this order to the Registrar of the City Civil Court, Bombay for recording disposal of the Suit. The Appeal from Order is disposed of in the above terms. No costs.

12. All contentions of the parties on merits are kept open.

[G.S. KULKARNI, J.]