IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.701 OF 2016

ALONGWITH

CIVIL APPLICATION NO.885 OF 2016

M/s. Detinners Pvt Ltd .. Appellant/Applicant

Versus

Municipal Corporation of Greater Mumbai
and another .. Respondents

Mr. A. G. Kalawadia for the Appellant/Applicant.
Mrs. Madhuri More for the Respondent No.1.
Mr. S. P. Pandey for the Respondent No.2.

CORAM : R.M. SAVANT, J.
DATE : 27th JULY 2016

P.C.

1 The above Appeal from Order takes exception to the order dated 05.07.2016 passed by the Learned Judge of the City Civil Court, Borivali Division, Dindoshi, Mumbai, by which order, the Notice of Motion filed by the Appellant/original Plaintiff came to be dismissed. The said Notice of Motion was filed by the Plaintiff to restrain the Defendant No.2 from carrying out further construction on the suit premises admeasuring 10 X 13 sq.ft. situated on the plot of land bearing CTS No.64, Jogeshwari (W), Mumbai-102.

2 It is the case of the Plaintiff that it has acquired the plot of land on which the structure is situated by a Indenture of Lease dated 04.05.1955 alongwith structures thereon. It is the further case of the Plaintiff that one Mohd. Siddiqui who was allowed to use the suit premises during the period of his employment has allowed the Defendant No.2 to occupy the said premises without intimation and consent of the Plaintiff. This has happened after the services of said Mohd. Siddiqui were terminated by the Plaintiff and proceedings under Section 630 of the Companies Act for evicting him were adopted. The cause of action for filing the suit was that the repair permission which was granted to the Defendant No.2 by the MCGM on 17.06.2005 was revalidated by the MCGM on 07.06.2012 pursuant to which the Defendant No.2 was intending to carry out construction. It was the case of the Plaintiff that the said repair granted without the NOC of the Plaintiff/owner is illegal. The Defendant No.2 countered the case of the Plaintiff and contended that the suit structure was not 10 X 13 sq.ft. but was 22' X 30'. He denied that he has started work on 24.06.2012. It was pointed that the Plaintiff had not produced the Lease Deed dated 04.05.1955 on the basis on which the Plaintiff claims a right to the property. It was also pointed out that the repair permission granted on 17.06.2005 was not challenged by the Plaintiff. The Trial Court considered the said Notice of Motion being

No.1539 of 2012 and by the impugned order dated 05.07.2016 has dismissed the Notice of Motion. The Trial Court was of the view that the proper remedy for the Plaintiff was to file a suit for possession against the Defendant No.2. The Trial Court also adverted to the fact that the Defendant No.2 has challenged the authority of the Plaintiff to file the suit. The Trial Court has also adverted to the fact that the repair permission was granted to the Defendant No.2 in the year 2005 and though it was case of the Plaintiff that it had objected to carry out of repairs and therefore the repairs were not carried out, no material was placed on record in that regard. However, principally what has weighed with the Trial Court is that the Plaintiff without filing a suit for possession which was an efficacious remedy available to the Plaintiff in terms of Section 41(h) of the Specific Relief Act has chosen to file the instant suit. The Trial Court accordingly dismissed the instant Notice of Motion.

3 The Learned Counsel appearing on behalf of the Appellant/ original Plaintiff points out that the Plaintiff has in fact filed a suit for possession which is Suit No.3520 of 2013 against the Defendant No.2 which has been filed after the instant suit.

4 In my view, having regard to the reasons mentioned in the impugned order, no case for interference is made out. However, it is made

clear that if any such application is filed for interim reliefs in the said suit of the year 2013, having regard to the fact that in the instant suit reliefs have been denied to the Plaintiff on the ground that it has not filed a suit for possession, the said application would be considered on its own merits and in accordance with law uninfluenced by the order impugned in the present Appeal from Order. With the aforesaid observations, the Appeal from Order is dismissed.

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

[R.M. SAVANT, J]