

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (ST) NO.20195 OF 2016
WITH
CIVIL APPLICATION NO.20197 OF 2016
IN
APPEAL FROM ORDER (ST) NO.20195 OF 2016

Sunil Rajaram Zode Appellant.
V/s.
Municipal Corporation of Greater Mumbai
and anr Respondents.

Mr. Pradeep J. Thorat, for the applicant.
Mrs. M.R. Bhoir, for the Respondent Corporation.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 18TH AUGUST, 2016.

P.C. :

1. Admit.
2. Learned counsel for respondents waives service of notice.
3. With the consent of learned counsel for both parties, the appeal is heard finally at the stage of admission itself as the issue involved herein is short one.
4. It is submitted by learned counsel appearing for the appellant that when the matter was fixed for filing of reply by respondent No.1 Municipal Corporation, the trial Court heard the parties and passed the impugned order, refusing ad-interim relief. As a result, sufficient

opportunity was not given to the appellant to argue his case by relying upon the necessary documents to prove that his structure was authorized. It is submitted that appellant is in possession of suit structure since 1988 and he has been allotted the same by respondent no.2 Maharashtra Housing and Area Development Board. Therefore, it was necessary for the trial Court to hear and also to give an opportunity to the counsel for respondent No.2 MHADA, in order to ascertain whether the said structure is authorized or not. It was necessary for the respondent No.1 Municipal Corporation, to produce documents to show that the structure was beyond the plan sanctioned by it. Admittedly when the respondent corporation was also having copies of sanctioned plan, the trial Court should have satisfied on the basis of these documents which were more relevant to come to conclusion that appellant's structure is not authorized one, but it is beyond the sanctioned plan. It is urged that the trial Court has not extended such an opportunity either to the appellant or even to the respondent No.1 corporation or respondent No.2 MHADA. In such situation, learned counsel for the appellant submits that the matter may be remanded back to the trial Court, for deciding application for interim injunction and in the meanwhile extend the protection to the appellant, by directing parties to maintain status quo.

5. Learned counsel for respondent No.1 Municipal Corporation submits that sufficient opportunity was given to the appellant when show

cause notice was issued and served on him. He has appeared and produced only one receipt. Even in the Court when the matter was argued, appellant has not produced any document to prove that the construction was authorized. The burden was on the appellant to prove that the additional construction in respect of which notice was issued, was authorized and legal. In the absence of appellant's producing any such document to prove that the said structure is authorized one, trial Court has rightly rejected him the relief of ad-interim injunction. According to learned counsel for respondent No.1, no interference is therefore warranted in the impugned order.

6. However, in my considered opinion, as even on a cursory glance to the roznama, it is clearly reflected that on 12.7.2016, the matter was adjourned to 19.07.2016 for orders on interim relief/reply. Admittedly on 19.07.2016, reply was not filed and without such reply being on record, the trial Court has proceeded to hear application for ad-interim relief and rejected it, on the same day. In such situation, as rightly submitted by learned counsel for appellant, this practice of trial Court of proceeding to decide application without extending sufficient opportunity to both parties, especially to respondents to file their reply so that the appellant would also get an opportunity to go through reply and put up his case, is not healthy one. Therefore, interest of justice requires that when the matter pertains to construction over immovable property, of which the appellant

is in possession since 1988, the matter needs to be heard on merits, after respondent Nos. 1 and 2 file their reply to the said application for interim injunction.

7. The appeal is, therefore, allowed to this limited extent.

8. The impugned order, passed by the trial Court is set aside.

9. The matter is remanded to the trial Court to decide application for interim injunction afresh, within four weeks from the date of receipt of copy of this order.

10. Respondent Nos. 1 and 2 to file reply to the application of interim injunction within two weeks from today. If respondent Nos 1 and 2 file their reply to the said application, the appellant's right to file rejoinder, if necessary, within two weeks thereafter, is reserved.

11. In the meanwhile parties to maintain status quo as of today.

12. The appeal and Civil Application, both are disposed off in above terms.

[DR. SHALINI PHANSALKAR-JOSHI, J.]