

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (STAMP) NO.22390 OF 2016
ALONG WITH
CIVIL APPLICATION (STAMP) NO.22391 OF 2016

Mehboobee Abdul Wahade	 Appellant / Applicant
V/s.	
Municipal Corporation of Greater Mumbai	 Respondent

Mr. Lahu S. Gaikwad for the Appellant-Applicant.

Mrs. Madhuri More for the Respondent-BMC.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 25TH AUGUST 2016.

P.C. :

1. Heard learned counsel for the parties.
2. The Appeal is taken up for hearing forthwith, with the consent of learned counsel for the parties, at the stage of admission itself, as the question involved in this Appeal is a very short one.
3. This Appeal is preferred against the Judgment and Order dated 14th July 2016 passed by the City Civil Court at Mumbai, thereby rejecting the appellant's prayer for ad-interim relief restraining the respondent-Municipal Corporation from acting in pursuance of the notice dated 23rd March 2016 issued to her under Section 55 of the M.R.T.P. Act.

4. It is submitted by learned counsel for the appellant that, the appellant is in possession of the suit structure since the year 1960 and carrying out business as 'garage'. The landlord has filed a suit against the appellant, being R.A.E. Suit No.604/897 of 2009; thus, prima facie, establishing the appellant's possession in the suit property.

5. In view thereof, in my considered opinion, it would be just and proper to direct the Trial Court to proceed with the hearing of Notice of Motion, which is still pending and in which respondent-Municipal Corporation is yet to file reply.

6. It would be proper, therefore, that, after the respondent-Municipal Corporation files reply to the said Notice of Motion, the Trial Court shall hear the parties on merits and decide the Notice of Motion.

7. Considering that the appellant is in possession of the suit premises since last more than fifty years, it would be just and proper to direct the respondent-Municipal Corporation not to take any action in pursuance of the impugned notice dated 23rd March 2016 issued under Section 55 of the M.R.T.P. Act till the Notice of Motion is decided.

8. In view thereof, the Appeal is disposed of by passing following order:-

“O R D E R”

- (i) Both the parties to appear before the Trial Court on 27th September 2016. Thereafter, the respondent-Municipal Corporation to file say to the Notice of Motion within a period of three weeks thereafter. The Trial Court then to proceed with the hearing of the Notice of Motion as expeditiously as possible.
 - (ii) Till the decision on the Notice of Motion, the respondent-Municipal Corporation is directed not to act in pursuance of the impugned notice dated 23rd March 2016 issued under Section 55 of the M.R.T.P. Act.
9. No order as to costs.
10. In view of disposal of the Appeal, Civil Application (Stamp) No.22391 of 2016 no more survives and the same is disposed of.
11. Parties to act on the authenticated copy of this order.

[DR. SHALINI PHANSALKAR-JOSHI, J.]