

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Appeal from Order NO. 1017 OF 2015
with
Civil Application No.1247 of 2015
with
Civil Application No.341 of 2016

Shri Ram Madhavrao Waghmare. ...Appellant
Versus
 1.Municipal Corporation of Gr.Mumbai & Ors. ...Respondents

Mr.Ajay S.Patil, for the Appellant.

Mr.S.K.Sonawane, for the Respondent – BMC.

CORAM: G. S. KULKARNI, J.

DATED: 27th April, 2016

PC:-

1. Heard the learned Counsel for the parties. By this appeal, the Appellant-Plaintiff challenges the ad-interim order dated 24 July 2015 passed on draft Notice of Motion in L.C.Suit no.1706 of 2015. The Appellant in the said Notice of Motion has prayed for injunctory reliefs praying that the Respondents – Defendants be restrained from demolishing the suit premises as specifically described in prayer clause (a) of the Notice of Motion.

2. By the impugned order, the learned Trial Judge after taking into consideration the facts as set out in the plaint and the interim

application, refused to grant the ad-interim relief. Learned Counsel for the Appellant fairly submits that after the impugned order was passed and after filing of this appeal, the Corporation has demolished the suit structure on 10th October,2015.

3. The case of the Respondent-Corporation which is set out in the Notice dated 16th June,2015 under Section 314 of the Mumbai Municipal Corporation Act was that the Appellant-Plaintiff was not eligible for permanent alternate accommodation and it was observed that the Appellant-Plaintiff had encroached upon the plot of land by constructing structure when already the land below the unauthorised structure was completely cleared by removing all encroachments for the purpose of construction of service road and again it was unauthorisedly encroached by the Appellant-Plaintiff and thus, he was called upon to remove the encroachment within 48 hours of issuance of notice.

4. The learned Counsel for the Appellant has taken out a Civil Application No.341 of 2016 seeking prayer that the suit structure which is demolished on 20th October,2015 be restored.

5. After hearing the learned Counsel for the parties and after considering the facts and circumstances of the case, it is evident that the Notice of Motion is pending final hearing before the Trial Court. The

impugned order would not call for any interference at this stage in view of the above development that the structure has already been demolished by the Municipal Corporation on 10th October,2015. It would be appropriate that the Appellant approaches the Trial Court for adjudication of the Notice of Motion which is pending adjudication. If the reply affidavit is not filed by the Respondent-Corporation, the same would be filed within a period of six weeks from today.

6. In view of the above observations, no adjudication of this Appeal from Order is called for. The Appellant is at liberty to approach the Trial Court after the pleadings in the Notice of Motion are complete with a request to the Trial Court for early hearing of the Notice of Motion, which shall be considered on its own merits.

7. Needless to observe that the Notice of Motion would be decided on its own merit and without being influenced by the impugned order.

8. The Appeal is disposed of in the above terms. No order as to costs. As the Appeal itself is disposed of, Civil Application No.1247 of 2015 and Civil Application No.341 of 2016 would not survive for consideration, and accordingly stand disposed of.

(G. S. KULKARNI,J.)