

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1350 OF 2016
ALONG WITH
CIVIL APPLICATION NO.3821 OF 2016

Javed Abdul Hamid Khan	 Appellant / Applicant
V/s.	
The Mumbai Municipal Corporation of Greater Bombay, Mumbai.	 Respondent

Mr. Mohit P. Jadhav for the Appellant-Applicant.

Mrs. Madhuri More for the Respondent.

Mr. Dilip S. Dhum, Sub-Engineer (Build & Fact./'S' Ward) is present.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 25TH AUGUST 2016.

P.C. :

1. Heard learned counsel for the parties.
2. Admit.
3. By consent, taken up for hearing forthwith at the stage of admission itself, as the issue involved in this Appeal is very short one.
4. This Appeal is preferred by the original plaintiff challenging the Judgment and Decree dated 27th July 2016 passed by the City Civil Court, Mumbai in L.C. Suit No.356 of 2013. The said suit was filed by the

appellant restraining the respondent-BMC from taking any action in pursuance of the notice dated 24th January 2013 issued under Section 354A of the Mumbai Municipal Corporation Act, 1888.

5. As per the appellant, he is in possession of the structure admeasuring 60 x 50 sq.ft., totally 3,000 sq.ft., with B.M. Wall with 14 ft. height and A.C. Sheet roof. By the impugned notice, he was called upon to remove the said structure. The appellant, therefore, claimed the relief of injunction restraining respondent-BMC from taking any action in pursuance of the said notice.

6. The suit was resisted by the respondent-BMC contending, inter alia, that, so far as the constructed suit structure is concerned, respondent-BMC is not going to take action. The only action contemplated is in respect of the unauthorized vertical extension to the existing compound wall, as mentioned in the notice dated 24th January 2013.

7. The Trial Court, on recording of evidence and hearing submission of both the parties, found that the appellant has not produced any document, worth the name, to show that the unauthorized vertical extension to the existing compound wall was legal or any permission for the same was obtained. As a result, the Trial Court was pleased to dismiss the suit.

8. In this Appeal, as stated above, the said Judgment and Decree is challenged.

9. It is submitted by learned counsel for the appellant that the appellant has no objection to demolish the unauthorized vertical extension to the existing compound wall, as stated in the said impugned notice dated 24th January 2013. Hence, the query was made with learned counsel for the respondent-BMC as to whether the impugned notice issued by the respondent-BMC was only pertaining to the demolition of the vertical extension to the existing compound wall. Learned counsel for the respondent-BCM has filed on record the statement of the Assistant Engineer (B & F) 'S' Ward, Designated Officer-I, by name Shri. Shelar, to the effect that the respondent-Municipal Corporation will demolish only the unauthorized structure mentioned in the impugned notice dated 24th January 2013.

10. Admittedly, the unauthorized structure mentioned in the impugned notice is the vertical extension to the existing compound wall, which, according learned counsel for the appellant, is not the part of the suit structure, where he is running business. In view thereof, learned counsel for the appellant has no objection in respondent-BMC taking action

against the said unauthorized vertical extension to the existing compound wall. Therefore, nothing remains in this Appeal.

11. Hence, with the clarification and understanding that respondent-BMC will take action only in respect of the unauthorized vertical extension to the existing compound wall, as stated in the impugned notice dated 24th January 2013, without disturbing the suit structure of the appellant, the Appeal stands dismissed.

12. No order as to costs.

13. In view of dismissal of the Appeal, Civil Application No.3821 of 2016 pending in the Appeal no more survives and the same stands disposed of.

[DR. SHALINI PHANSALKAR-JOSHI, J.]