

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (STAMP) NO.23798 OF 2016

Arun Jakson James	]	
Age : 45 years, Occ.: Service,	]	
R/at 118-A, 1 st Floor, Sindhi Society,	]	
Near Sai Darshan Building, Chembur,	]	 Appellant /
Mumbai – 400 071.	]	Org. Plaintiff

Versus

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|--|---|------------------|
| 1. The Brihanmumbai Municipal Corporation, |] | |
| A Body Corporate, registered and incorporated |] | |
| under the provisions of B.M.C. Act, having its |] | |
| registered address at Brihanmumbai |] | |
| Mahanagarpalika, Mahapalika Marg, Fort, |] | |
| Mumbai – 400 001. |] | |
| AND |] | |
| One of its Branch Office address at M/West |] | |
| Ward, Mumbai, Office Building Sharadbhau |] | |
| Acharya Marg, Chembur, Mumbai – 400 078. |] | |
| 2. The Assistant Commissioner, |] | |
| M/West Ward, Mumbai, Office Building |] | |
| Sharadbhau Acharya Marg, Chembur, |] | |
| Mumbai – 400 078. |] | |
| 3. Manjit Singh Jodh Singh Abrol |] | |
| Adult, Indian, R/at B-602, Tolaram Smurti |] | |
| C.H.S. Ltd., Chembur Colony, Mumbai – 74. |] | |
| 4. Mukesh Ramesh Bajaj |] | |
| Adult, Indian Inhabitant, |] | |
| R/at Flat No.1104, B-Wing, Hari Kunj-II, |] | |
| Sindhi Society, Chembur, Mumbai – 71. |] | Respondents |

Ms. P.M. Bhansali for the Appellant.

Mrs. Madhuri More for Respondent Nos.1 and 2 – BMC.

Ms. Deepa Pohuja for Respondent Nos.3 and 4.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 27TH SEPTEMBER 2016.

ORAL JUDGMENT :

1. Admit.
2. Heard learned counsel for the parties finally at the stage of admission itself. Learned counsels for the respondents waive service of notice.
3. By this Appeal, the appellant-original plaintiff is challenging the order dated 1st July 2016 passed by the learned Judge of the City Civil Court, Mumbai in Draft Notice of Motion in L.C. Suit No.1427 of 2016. By the impugned order, Trial Court has refused the ad-interim relief and directed the appellant to implead both caveators as co-defendants in the Suit and serve the writ of summons upon them.
4. As per the appellant, he is in possession of the suit premises as tenant and his tenancy is already confirmed. The caveators, namely, Manjit Singh Jodh Singh Abrol and Mukesh Ramesh Bajaj, respondent Nos.3 and 4 herein, have purchased the said property. The notice under Section 354 of the Mumbai Municipal Corporation Act, 1888, (*for short, "the MMC Act"*), dated 1st April 2016 came to be issued and served on the caveators, i.e. respondent Nos.3 and 4 herein, and also on the present appellant on the count that the suit structure has become dilapidated, dangerous and needs to be demolished. In view thereof, the appellant

approached the Trial Court and sought the relief of injunction restraining respondent Nos.1 and 2-the Municipal Corporation from taking any action in pursuance of the said notice issued under Section 354 of the MMC Act.

5. Appellant, along with the Suit, has also sought the relief of interim injunction by filing Notice of Motion. Trial Court rejected the said Notice of Motion on the two counts; firstly, that the caveators/respondent Nos.3 and 4 were not joined in the Suit, though they were the necessary parties being the owners of the suit premises. The second ground on which the Trial Court rejected the Notice of Motion was that the Structural Audit Report dated 4th April 2016 placed before the Assistant Engineer, who forwarded the same to the Deputy Engineer for verification and who has, after verification, on 30th May 2016 confirmed that the suit premises were in ruinous condition, they fall under “C-1” category and, therefore, required to be pulled down immediately. On these two facts, the Trial Court found that the relief, which appellant was seeking, cannot be granted as it may have the disastrous consequences.

6. Now the submission of learned counsel for the appellant is that the appellant wants to have his own Structural Audit Report, which appellant is not permitted to do. It is urged that the Structural Audit Report, on which the respondent Nos.1 and 2-the Municipal Corporation is relying upon, is

submitted by respondent Nos.3 and 4, who are the owners, and, naturally, they being interested in demolition and pulling down of the suit premises, that Structural Audit Report favours their case and not the case of the appellant, who is actually in possession of the suit premises. It is urged that, now the notice under Section 488 of the MMC Act is issued and the suit structure is likely to be pulled down by the respondent Nos.1 and 2-the Municipal corporation at any time and, therefore, urgent ad-interim relief be granted.

7. At the outset itself, it has to be stated that both the grounds mentioned by the Trial Court in its impugned order stand as on today also. When, admittedly, the owners are also the interested party and they had filed the caveat and not joined in the Suit, the Trial Court was justified in holding that the Suit itself is apparently not maintainable for want of non-joinder of necessary parties. Secondly, the Trial Court has also relied upon the report of the respondent Nos.1 and 2-the Municipal Corporation confirming that the suit premises are in ruinous condition, falling in “C-1” category and, therefore, required to be pulled down. Hence, the discretion exercised by the Trial Court in refusing ad-interim relief, being properly exercised, does not call for any interference at this stage.

8. It is also pertinent to note that, in respect of the said notice dated 1st

April 2016, issued by the respondent Nos.1 and 2-the Municipal Corporation, under Section 354 of the MMC Act, one Mr. Vishnu Parmanand Shahani, claiming himself to be the owner of the suit premises, has filed L.C. Suit No.1568 of 2016 before the Trial Court and in that Suit, he has also filed Notice of Motion seeking ad-interim relief of injunction restraining respondent Nos.1 and 2-the Municipal Corporation from taking any action in pursuance of the said notice. After the Trial Court refused ad-interim relief to him, he has preferred Appeal from Order (Stamp) No.21118 of 2016 challenging the said order and this Court, vide its order dated 11th August 2016, after considering the Structural Audit Report relied upon by the Trial Court therein, was pleased to dismiss the said Appeal, holding that the suit structure, being in ruinous condition, needs to be demolished and the respondent Nos.1 and 2-the Municipal Corporation, being the Planning Authority, has to take appropriate decision and once it has taken such decision, no case was made out for interference.

9. Needless to state that, once this Court has applied its mind to the legality of the notice dated 1st April 2016, issued under Section 354 of the MMC Act, and found that the said notice is issued legally, properly and no interference is warranted therein, this Court cannot sit in appeal on the said order and again decide legality and validity of the said notice.

Therefore, on this very ground also, the present Appeal does not hold any merit and hence liable to be dismissed.

10. Learned counsel for respondent Nos.3 and 4 have also produced on record a copy of the order passed by the Division Bench of this Court in O.O.C.J. Writ Petition (Lodging) No.2157 of 2016. The said Writ Petition was filed by the father of the present appellant and in the said Writ Petition also, he has challenged the same notice dated 1st April 2016 issued by the respondent Nos.1 and 2-the Municipal Corporation, under Section 354 of the MMC Act. Subsequently, he was permitted to withdraw the said Writ Petition, considering that already his son-the present appellant has filed the Suit.

11. Learned counsel for the respondent Nos.1 and 2-the Municipal Corporation has also pointed out that the notice was issued under Section 353-B of the MMC Act to the appellant also, for producing the Structural Audit Report. However, the appellant has failed to do so. Learned counsel for respondent Nos.3 and 4 then points out that the copy of the Structural Audit Report was produced by the father of the appellant in the above-said Writ Petition also. Thus, on this ground also, there remains no cause or grievance for the appellant to contend that his Structural Audit Report is not taken into consideration.

12. Thus, looked at it from any angle, absolutely no case is made out for interference in the impugned order passed by the Trial Court. The Appeal, therefore, holds no merit and hence stands dismissed.

13. At this stage, learned counsel for the appellant requests the Court to grant time of two weeks to the appellant for vacating the suit premises. She submits that the appellant is ready to give his undertaking and also the undertaking of his father, stating that they will vacate the suit premises after expiry of two weeks from today and also withdraw both the Suits filed by them in the Trial Court, subject to protection of their tenancy rights. Respondent Nos.3 and 4 have no objection for the same.

14. In view thereof, it is directed that the time of two weeks is given, as a last chance, to the appellant to vacate the suit premises, subject to appellant filing the undertaking of himself and his father within two days, stating that they will vacate the suit premises, without fail, before the expiry of the two weeks period from today and they will also withdraw the Suits filed by them and, further, subject to undertaking that they will be occupying the suit premises at their own risk, costs and consequences and respondent Nos.1 and 2-the Municipal Corporation and respondent Nos.3 and 4 will not be held liable for any mishap, which may happen.

[DR. SHALINI PHANSALKAR-JOSHI, J.]