

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 148 OF 2015
WITH
CIVIL APPLICATION NO.189 OF 2015**

Naresh Kanji Wadhia

..Appellant

Vs.

The Mumbai Municipal Corporation & Anr.

..Respondents

Mr. Kunal Bhanage for the Appellant

Mrs. M. R. Bhoir for the Respondents

CORAM : R. M. SAVANT, J.

DATE : 21st JULY, 2016

P.C.

1 The above Appeal From Order takes exception to the order dated 2-9-2014 passed by the Learned Judge of the City Civil court, Borivali Division, Dindoshi Mumbai by which order the ad-interim reliefs came to be refused to the Appellant / Plaintiff. The subject matter of the Suit is the notice issued under the Section 351 of the Mumbai Municipal Corporation Act dated 2-05-2013. It is alleged against the Plaintiff in the said notice to the following effect:

(1) unauthorised enclosure of void on east side of building and its conversion into habitable area

(2) unauthorised construction by enclosing the elevation project and its conversion into habitable area of flat

(3) unauthorised construction of bathroom into the kitchen which is beyond the OCC plans approved by the MMC.

2 The Plaintiff replied to the said notice dated 2-5-2013 where upon an order came to be passed by the Designated Officer of the Municipal

Corporation of Greater Mumbai (for short MCGM) dated 24-7-2013 making the said notice absolute. This has resulted in filing of the instant Suit challenging the legality of the said notice and the order dated 24-7-2013 passed thereon. In the said Suit, the Plaintiff filed Notice of Motion for interim reliefs and moved an application for the grant of ad-interim reliefs. The said application for ad-interim reliefs has been rejected by the impugned order.

In so far as the first two items in the notice are concerned, it seems that before the Trial Court the communication dated 2-8-2013 addressed by the Plaintiff to the MCGM was produced wherein he had stated that he had complied with the notice and demolished certain portions.

In so far as the third allegation is concerned, the Plaintiff has filed an affidavit in this Court bearing yesterday's date wherein it has been stated that the situation of the kitchen is the same from 4th to the 7th floor of the Plaintiff's building as also in the adjoining 'A' wing i.e. the kitchen is in the place where earlier bathroom was shown in the plans.

3 The Trial Court has rejected the application for ad-interim reliefs on the ground that there is nothing on record produced by the Plaintiff to show the conversion of bathroom or that the changes made by the Plaintiff was approved by the MCGM. It is required to be noted that it is the case of the Plaintiff that he had received the possession of the flat in the same position as is prevailing today and that he has not made any changes. If the position of the

bathroom which is at present in the Plaintiff's flat is the same in the flats from 4th floor to the 7th floor in both the wings i.e. 'A' and 'B' then case for grant of ad-interim reliefs is made out pending the Motion. In my view the above Appeal From Order can be conveniently disposed of by the following order.

- (i) The impugned order dated 2-9-2014 is quashed and set aside and the Plaintiff is granted ad-interim relief in terms of prayer clause (a) of the Notice of Motion. The same would continue pending the hearing and final disposal of the Notice of Motion.
- (ii) The MCGM may file its Written Statement / Reply within 6 weeks from date.
- (iii) The Trial Court to decide the Notice of Motion on its own merits and in accordance with law, uninfluenced by the impugned order or the instant order.
- (iv) The contentions of the parties are kept open for being urged before the Trial Court.

4 The Appeal From Order is accordingly disposed of.

5 In view of the disposal of the Appeal From Order, the Civil Application No.189 of 2015 does not survive and to accordingly stand disposed of as such.

[R.M.SAVANT, J]