

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER ST.NO.27230 OF 2016
WITH
CIVIL APPLICATION ST.NO.27231 OF 2016

Saimin Shaikh through Power of
Attorney holder Mrs. Parveen

Majid Shaikh

.. Appellant

-Versus-

Municipal Corporation of Gr.Mumbai

.. Respondent

Mr. J.S.Kini i/b. Suresh Dubey for appellant

Mrs. M.R.Bhoir for Corporation.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 3rd October 2016.

P.C.

1] This appeal is preferred against the order dated 26th September 2016 passed by the City Civil Court, Mumbai in Suit No.2565 of 2016 thereby rejecting ad-interim relief.

2] As per the case of the appellant, the only limited prayer the appellant was making in the notice of motion was not to demolish the suit stall without following due process of law. Reliance is placed on the judgement of Abdul Hasan Shaikh Mansuri Vs. Municipal Corporation of Mumbai and Ors., reported in 2007(4) All M.R. 97 wherein it was held that

the Municipal Corporation cannot demolish the suit structure without following due process of law. According to the learned Counsel for appellant, to substantiate that the appellant is in possession of the suit structure, various documents like copy of licence issued by the competent authority under Food and Drugs Administration Act, copy of Registration and Renewal of the said licence are produced on record along with the electricity bills issued by Reliance Energy and in such a situation, the respondent cannot demolish the suit stall without due process of law.

3] However, the impugned order passed by the trial court reveals that the trial court has considered these documents. However, it found that the appellant has not produced any documents proving that the structure is legal or authorised or it is registered with Municipal Corporation. Learned Counsel for respondent has in this respect relied upon the observations of this Court in paragraph 10 as follows:-

“10. Indeed, it is possible that in a given case, taking advantage of such statement to be made by the Authority the unscrupulous plaintiff may carry on some unauthorised construction or extend the existing structure. To obviate such a situation, the plaintiff shall be obliged to produce on record, on affidavit, the latest photographs showing all the dimensions of the suit structure and the plans thereof to be certified by a licensed Architect, so that the onus will rest on the plaintiff if any additional construction is noticed later on during the action before the authority or the court of law and such plaintiff can be denied the equitable relief as also

proceeded against for appropriate action, civil and criminal.”

4] In the instant case, needless to state that the appellant has not produced on record the plan of the suit stall which is certified by the licenced architect or any document to show that the suit stall is registered with Municipal corporation or its Architect has certified it with due permission from the Municipal Corporation. In such a situation, in my considered opinion, the trial court has rightly rejected the interim relief. Otherwise also, the notice of motion is pending before the trial court. Both the parties can go and agitate the case before the trial court. Needless to state that the trial court shall decide the notice of motion as expeditiously as possible.

(DR. SHALINI PHANSALKAR-JOSHI, J)