

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Appeal from Order NO. 515 OF 2015
with
Civil Application no.653 of 2015

Anjuman Asheqan-E-Rasool, Through Its Vice President ...Appellant

Versus

Municipal Commissioner And Anr

...Respondents

Mr.Nitin P. Dalvi, for the Appellant.

Mr.A.V.Awate, for the Respondent-BMC.

CORAM: G. S. KULKARNI, J.

DATED: 3rd May, 2016

PC:-

Not on board taken on board.

1. Learned Counsel for the Appellant has moved a praecipe and sought production of the papers of this appeal. The contention that certain tenantable repairs are required to be carried out to the suit structure which is stated to be a Masjid.

2. Considering the nature of the proceedings, it would be appropriate that if the Appellant is desirous to seek this relief, the Appellant approaches the Trial Court by making an application in that regard.

3. The Appellant would be at liberty to approach the Trial Court to seek the reliefs as set out in the praecipe. Praecipe is accordingly disposed of.

4. At this stage Mr.Dalvi, learned Counsel for the Appellant submits that this appeal has been preferred by the Appellant against the order dated 7th October,2014 passed by the learned Judge of the City Civil Court at Mumbai, whereby the prayer for ad-interim reliefs as sought by the Appellant on a draft Notice of Motion was rejected. Learned Counsel for the Appellant has drawn my attention to the order dated 17th November,2014 passed by this Court, which reads thus:-

“ This Appeal from Order is filed challenging the order of the trial Court. The learned counsel for the appellant submitted that the respondent/Corporation is likely to demolish the entire mosque, which is in existence prior to the year 1928.

2. On perusal of the order and notice, it appears that the Corporation has given notice for unauthorized extension of the then existing structure. However, it is now necessary for the Corporation to make it clear by filing affidavit what is the unauthorized extension of the mosque and which portion of it the Corporation intends to demolish.

3. Stand over to 24th November, 2014. The Corporation to hold their hands till 24th November, 2014 and the appellants not to construct further.”

5. It is submitted that the above order has remained in operation till date, further the Municipal Corporation neither challenged the said

order or applied for vacating the same. Mr.Dalvi would submit that the Appellant is also willing to approach the Trial Court with a request to take up the pending Notice of Motion for hearing and that accordingly this appeal can be disposed of by continuing the protection which was granted by the order of this Court dated 17th November,2014 till the disposal of the Notice of Motion.

6. Considering the facts and circumstances of the case, the request as made by Mr.Dalvi is not unreasonable. It would be appropriate that the Notice of Motion is heard early. In this view of the matter, the Appeal from Order, therefore, does not require any further adjudication. The Appeal from Order is accordingly disposed of by permitting the Appellant to approach the Trial Court with a request to take up the hearing of the Notice of Motion.

7. All the contentions of the parties are expressly kept open.

8. Till the disposal of the Notice of Motion, the ad-interim protection granted by this Court by order dated 17th November,2014 shall continue to operate.

9. It is clarified that in case the Appellant has certain urgency in

regard to the urgent tenantable repairs and to seek any such urgent reliefs before the trial Court, the Appellant can always approach the learned Vacation Judge City Civil Court, Mumbai.

10. The Appeal from order is disposed of in the above terms. No order as to costs. As the Appeal from order itself is disposed of, the Civil Application would not survive and same is also disposed of.

Parties to act on the authenticated copy of this order.

(G. S. KULKARNI,J.)