

Amk

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**APPEAL FROM ORDER (STAMP) NO. 30689 OF 2016
WITH
CIVIL APPLICATION (STAMP) NO. 30690 OF 2016**

Rukshana Gouse Mohd. Sheikh & Anr. .. Appellants
Vs.
Municipal Corporation of Gr. Mumbai .. Respondent

Mr. Devdatta Ajit Sakhalkar for the Appellant.
Mrs. M. R. Bhoir for the BMC.

CORAM : G. S. KULKARNI, J.
DATE : 23rd NOVEMBER, 2016.

P. C. :

1. By consent, the appeal is heard finally. The impugned order is quite disturbing. The impugned order is dated 24.10.2016 passed by the learned Judge, City Civil Court at Dindoshi (Borivali Division), Mumbai, by which the learned Trial Judge appears to have taken up for hearing Notice of Motion No. 2842 of 2016 in L. C. Suit No. 2651 of 2016 filed on behalf of the appellants/plaintiffs. The learned Judge further proceeds to record a submission on behalf of the defendant/Municipal Corporation that it intends to file a reply on 21.12.2016. The Learned Trial Judge also records the request on behalf of the appellants/plaintiffs that the Municipal Corporation should file a reply urgently. Thereafter the learned Judge on this background suddenly proceeds to observe that interim relief is refused even before the rival contentions are recorded and before recording the reasons.

2. The further observation that the appellants/plaintiffs are

tenants and the landlord is not impleaded and, therefore, would not be entitled to any reliefs also is misconceived and cannot be accepted. The rights of the appellants/plaintiffs on the basis of the documents in the context of the grievance in the plaint were prima facie required to be examined in the context of the injunction application. However, the learned Judge without examining the appellants' rights has made sweeping observations to record that as the tenant has limited rights and, therefore, would not entitle to any ad interim relief, when the contention of the appellants before the learned Trial Judge was that the impugned notice under Section 351 was addressed to the appellants. A reference is also made to some proceedings filed by Laxmiben, the wife of the owner or occupier as observed in the impugned order the reliance of which is also not discussed. What is surprising is that the learned Trial Judge on these cryptic observations dismissed the Notice of Motion.

3. The approach of the learned Trial Judge in passing the impugned order is surely something which is not acceptable. A judicial concern and a judicial approach is what is necessary and expected when the Court is passing orders dealing with valuable rights of property/shelter. At the most learned Judge ought to have considered the Notice of Motion/application moved on behalf of the appellant as an ad interim application and if the learned Trial Judge was to be satisfied that on merits ad interim reliefs cannot be granted it could have been so ordered keeping the Notice of Motion pending awaiting reply to be filed by the

defendant/Municipal Corporation. However learned Judge proceeded to dispose of the Notice of Motion itself. It is also clear that a fair opportunity was not granted to the parties to put forth their contentions by permitting the the defendants to file reply to the Notice of Motion. Such haste was not necessary. The reasons which are set out in the cryptic order disposing of the Notice of Motion also are not sufficient to support the conclusion of dismissal of the Notice of Motion. In these circumstances, the impugned order passed on Notice of Motion No. 2842 of 2016 is required to be quashed and set aside. Ordered accordingly.

4. The parties shall appear before the Trial Court in the Notice of Motion and after the reply affidavit has been filed by the Municipal Corporation, the learned Trial Judge shall hear the parties and proceed to pass appropriate orders ad interim or interim on the said Notice of Motion.

5. In this appeal the learned Vacation Judge on 01.11.2016 was pleased to pass the following order:

*"(i) Ad-interim relief is granted in terms of prayer Clause
(c) till the next date of hearing;*

(ii) Stand over to 23rd November, 2016;

(iii) Applicants to communicate this order."

6. It is in the interest of justice that in the meantime till such application ad interim or interim is heard and decided by the learned Trial Judge, the ad interim protection granted by the learned Vacation Judge in the order dated 01.11.2016 shall continue to operate. The Municipal

Corporation is at liberty to make an application before the Trial Court for early hearing of the Notice of Motion for ad interim or interim reliefs as soon as the reply affidavit is filed.

7. Accordingly, the appeal is allowed in the above terms. No costs.

8. In view of the disposal of the Appeal, Civil Application (Stamp) No.30690 of 2016 does not survive and stands disposed of.

9. The office is directed to forward a copy of this order to the learned Trial Judge.

[G. S. KULKARNI, J.]