

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Appeal from Order (ST) NO. 30936 OF 2016
with
Civil Application (st) No.30938 of 2016

Glass And Glass (India) Private Limited	...Appellant
<i>Versus</i>	
Asst. Municipal Commissioner, H/east Ward	
And Anr	...Respondents

Mr.Afroz A.Siddiqui, for the Appellant.

Ms.Madhuri More, for the Respondent-BMC.

CORAM : G.S. KULKARNI, J.

DATE : 16th November, 2016.

ORDER:

1. Heard Mr.Siddiqui, learned Counsel for the Appellant and Ms.Madhuri More, learned Counsel for the Municipal Corporation.

2. The challenge in the appeal is to ad-interim order dated 9 November 2016 passed by the learned Judge, City Civil Court, Mumbai, Borivali Division at Dindoshi on draft Notice of Motion in L.C.Suit No.2963 of 2016. By the impugned order, the ad-interim relief as prayed for by the Appellant-Plaintiff has been rejected. The grievance in the suit before the learned Trial Judge is in regard to the orders directing the

Appellant being called upon to remove unauthorised construction as set out in the notice dated 18 April 2016 issued under Section 351 of Mumbai Municipal Corporation Act, 1888. In pursuance of the show cause notice, the Appellant submitted a detailed reply pointing out the documents to show that the construction as complained in the notice is authorised. By a reasoned order dated 26 October 2016 the designated officer of the Municipal Corporation after taking into consideration each and every document has come to a conclusion that the construction is unauthorised and ordered to remove the said unauthorised construction within seven days.

3. Mr. Siddiqui, learned Counsel for the Appellant is not in a position to point out as to on what basis the Appellant-Plaintiff would urge that the construction is legal and authorised. Perusal of the order dated 26 October 2016 shows that the designated officer of the Municipal Corporation in fact has taken into consideration all these documents. I, therefore, do not find any reason to interfere with the order passed by the learned Trial Judge who has taken into consideration all these documents which are placed on record. At this stage Mr. Siddiqui, learned Counsel for the Appellant submits that the structure is in existence. He intends to submit some further documents which would show the legality of the

structure. Admittedly these documents are not the part of record before the Trial Court and it is contended that the applications are made to some authorities to submit these documents. If the Appellants obtain any such documents and if they wish to rely upon the same, nothing precludes the Appellants from doing so and approaching the trial Court with necessary application.

4. In the circumstances, I am of the opinion that in the interest of justice, one more opportunity be granted to the Appellant to produce such further material as it intends to produce before the Trial Court in which case the learned trial Judge shall consider such further material and pass an appropriate orders on any such application which may be moved on behalf of the Appellant-Plaintiff. All contentions of the parties are expressly kept open. In the meantime, considering that the learned Vacation Judge of this Court by an order dated 11 November 2016 has granted an ad-interim protection till 17 November 2016, only for a period of further three weeks, the ad-interim granted by this Court on 11 November 2016 is continued.

5. It is clarified that continuation of the ad-interim order for a period of three weeks, is not an expression on the merits of the matter.

The learned Trial Judge shall consider any such application of the Appellant on its own merit.

6. The Appeal is disposed of in the above terms. No costs.

7. The Civil Application does not survive. It is accordingly disposed of.

(G.S.KULKARNI, J.)