

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

**APPEAL FROM ORDER (L) NO.31770 OF 2016
WITH
CIVIL APPLICATION (L) NO.31771 OF 2016
IN
APPEAL FROM ORDER (L) NO.31770 OF 2016**

M/s Ekta Supreme Corporation ...Appellant/Org. Plaintiff
vs.
The Municipal Corporation of Greater
Mumbai ...Respondent/Org. Defendant

Mr. R. A. Thorat, Senior advocate i/b Mr. Prashant Surve for the
Appellant.
Ms. Madhuri More for the BMC.

**CORAM: G.S.KULKARNI, J.
DATE: 22nd NOVEMBER, 2016.**

P.C.:-

1. Not on board. Taken on board on a praecipe as moved
on behalf of the Appellant.

2. The challenge is to the order dated 17/11/2016 passed
by the learned Judge, Bombay City Civil Court, Dindoshi, Goregaon
whereby the learned Trial Judge has rejected Notice of Motion
No.3399/2016 filed on behalf of the Appellant/Plaintiff in Suit
No.3073/2016. The challenge in the Suit is to the notice issued
u/s.53(1) of the MRTP Act 1966.

3. Learned counsel for the Appellant has drawn my
attention to the said notice and more particularly schedule which is
attached to the notice which reads thus:

“Description of unauthorized development together the

particulars of land:

Unauthorized violations in the existing building beyond C.C. Plans approved under No.CE/2363/WS/AH dated 21/7/2009.

- i) All niche area of the Building found covered;*
- ii) Internal changes found carried out”*

4. It is contended that the notice which was purportedly issued u/s.53(1) of the MRTP Act contained vague particulars and the Municipal Corporation has initiated action on the basis of said notice against the Appellant/Plaintiff. Learned Counsel for the Appellant/Plaintiff has also drawn my attention to a letter dated 8/12/2016 whereby the Appellant/Plaintiff contested the said notice. It is submitted that surprisingly without rectifying the defect as pointed out by the Applicant/Plaintiff, the Designated Officer of the Municipal Corporation proceeded to reject the representation vide communication dated 27/10/2016 on complete misconception of the provisions of the MRTP Act.

5. As regards the impugned order it is contended on behalf of the Appellant/Plaintiff that the Trial Court ought to have called upon the Respondent/Corporation to file a reply to the Notice of Motion however at the hearing of the ad-interim application itself the Trial Court has rejected the Notice of Motion filed on behalf of the Appellant. According to the Appellant/Plaintiff the observations made in paragraph 3 and 4 of the impugned order are not sustainable and more particularly in view of the vague notice issued u/s.53(1) MRTP Act, 1966. It is therefore submitted that interference is called for. The Notice of Motion of the Appellant/Plaintiff is required to be heard on merits after giving opportunity to both the parties.

6. Learned counsel on behalf of the Municipal Corporation has justified the impugned order and more particularly on the ground that the notice clearly refers to the unauthorized nature of work undertaken by the Appellant. Thus, it is submitted that the appeal be dismissed.

7. Having heard the learned counsel for the parties and with their assistance having perused the documents placed on record, I am of the opinion that there is much substance in the contentions as urged on behalf of the Appellant. Prima facie though the schedule to the impugned notice sets out the omissions in undertaking construction to record that the same is not in accordance with the approved plans, however these details do not clearly set out as to which are the objectionable/unauthorized portions as also internal changes are also not set out. Further what is set out in the notice is that the same has been issued as per the MCGM circular under No.DMC/RE/010 as notified by the Maharashtra Government Gazette, Extraordinary part 4 dated 13/3/2012. This has also been referred by the learned Judge in the impugned order. On a query as made to the learned counsel for the Respondent, she was unable to make any submission or throw light on what is the nature of the circular. Surprisingly this Circular is also not part of record before the Trial Court.

8. In the above circumstances, in my opinion this is a fit case where the Appeal is required to be allowed. Learned Judge ought not to have rejected the Notice of Motion itself, at the ad-interim stage. The facts indicate that the learned Judge ought to

have directed the Municipal Corporation to file a reply and justify the impugned notice and after granting opportunity to the parties decided the Notice of Motion. Such hurried exercise would only lead to multiplicity of litigation apart from causing injustice to the parties. Impugned order is accordingly quashed and set aside. Parties are directed to approach the Trial Court. The Respondent/Corporation shall file a reply affidavit to the Notice of Motion within a period of 4 weeks from today. Rejoinder if any, to be filed within 2 weeks thereafter. The Learned Trial Judge shall hear the Notice of Motion afresh and pass appropriate orders. All contentions of the parties on the merits of the matter are expressly kept open. Needless to observe that the learned Trial Judge shall decide the Notice of Motion on its own merits without being influenced by the impugned order dated 17/11/2016 and this order. In the meantime, the Respondent/ Corporation is directed not to take any coercive action under the impugned notice issued u/s.53(1) of the MRTP Act till the Notice of Motion is decided and for a further period of two weeks thereafter if an adverse order is passed against the Appellant/Plaintiff.

9. Appeal is accordingly disposed of in the above terms. In view of disposal of the Appeal, Civil Application (L) No.31771/2016 does not survive and is accordingly disposed of.

10. The parties to act on authenticated copy of the order.

(G.S.KULKARNI, J.)