

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.1026 OF 2016 WITH
CIVIL APPLICATION NO.1290 OF 2016**

Rajkumar Ramdular Gayadin Appellant

vs

Asst Municipal Commissioner & ors ... Respondents

Mr.Y.R.Shah for Appellant

Ms.Madhuri More for MCGM-Respondent

CORAM: G.S.KULKARNI, J

DATE : 6 DECEMBER 2016

P.C.

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

2. Heard learned counsel for the appellant-plaintiff and heard learned counsel for the respondent.

3. This appeal is directed against an order dated 10.11.2016 passed by the learned Judge, City Civil Court, Mumbai on a draft notice of motion in L.C.Suit No.2494 of 2016, whereby ad-interim relief as prayed by the appellant/plaintiff has been refused. The case of the appellant/plaintiff is that he is a sub-tenant in respect of the suit stall which according to the learned counsel for the appellant/plaintiff is in existence prior to 1970. As the building is in a dilapidated condition, the respondent-Corporation has taken steps to get the building evicted.

Prayer of the appellant/plaintiff is for grant of a alternate accommodation as he is facing an eviction as a notice has been issued under section 354 of the Mumbai Municipal Corporation Act, 1888. From a perusal of the impugned order, it appears that the appellant had made an application by his Advocate's letter dated 14.10.2016 on which the Municipal Corporation had informed the appellant/plaintiff to produce documents to prove that he has become entitled for an alternate accommodation. Case of the Municipal Corporation is that the plaintiff has created a tailoring shop in a box adjacent to the suit building and therefore, he is not a tenant of the suit building. Stand of the Municipal Corporation is that the appellant has not produced any acceptable material except Bombay Shop and Establishment Licence which would show that he has any legal right in the premises to be entitled for an alternate accommodation.

4. Be that as it may, the impugned order is an ad-interim order and it appears that the appellant-plaintiff has submitted an application dated 14.10.2016 which is pending consideration of the Municipal Corporation. The application in any case is required to be decided.

5. Neither the record nor the learned counsel for the Municipal Corporation is in a position to show that the application has been decided. In that event, it would be appropriate that the Municipal Corporation decides the application in a time-bound manner. The

appellant/plaintiff is at liberty to submit the necessary documents to the concerned Designated Officer of the Municipal Corporation in support of his entitlement for an alternate accommodation which be submitted within a period of one week from today.

6. The Designated Officer of the Municipal Corporation shall consider these documents and pass a reasoned order in accordance with law within a period of one week thereafter. All contentions of the appellant in this regard are expressly kept open. In the meantime, till the application of the appellant-plaintiff is decided and the decision is so communicated to the appellant, the Municipal Corporation is directed not to take coercive action in respect of the Suit stall. This however would be subject to an undertaking of the appellant to be filed in this Court within a period of one week from today that he shall occupy the Suit stall at his own risk and consequences. A copy of the undertaking be also furnished to the Municipal Corporation and placed on record of the trial Court.

7. If any order adverse to the appellant is passed by the Municipal Corporation the appellant/plaintiff is at liberty to move the learned trial Judge.

8. Appeal from Order is accordingly disposed of in the above terms. No costs. C.A.No.1290 of 2016 does not survive and is accordingly disposed of.

{G.S.KULKARNI, J}

