

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.4818 OF 2016
in
FIRST APPEAL NO.1676 OF 2016

Ramashankar Ramdev Pandey... .. Applicant

vs

Municipal Corpn of Gr.Mumbai & ors.. Respondents

Mr.R.P.Singh I/b Mr.Avdesb Pandey and

Mr.Sudhir Pandey for Applicant

Mr.Aderbad Khodadad Irani Respondent no.2 in person

Ms.M.R.Bhoir for BMC

CORAM: G.S.KULKARNI, J

DATE: 9 DECEMBER 2016

P.C.

1. Not on Board.Taken on Board on a praecipe as moved on behalf of the applicant.

2. Heard Mr.R.P.Singh learned counsel for the applicant, Mr.Aderbad Khodadad Irani respondent no.2 in person and Ms.M.R.Bhoir learned counsel for the Municipal Corporation.

3. This appeal is directed against an order dated 12.11.2016 passed by the learned Judge, City Civil Court, at Bombay on an application by defendant no.2 below Exhibit 13 and 14 by which the defendant no.2 had prayed that the suit of the appellant be dismissed under provisions of Order 11 Rule 21 of the Code of Civil Procedure, 1973 for non-compliance of order dated 14.1.2015

whereby a statement of learned Advocate for the plaintiff was recorded that the plaintiff is ready to give inspection of the documents mentioned in the list of documents annexed to the plaint.

4. Grievance in the application as moved on behalf of the respondent no.2/defendant no.2 was that out of 12 documents which were listed in the list of documents (page no.23 of the paper book) inspection of some of the documents was not furnished. In addition to the list of documents, the respondent no.2 had also sought inspection of some other documents which are referred to in para 8 of the plaint.

5. The appellant-plaintiff opposed the application as filed on behalf of the respondent no.2 by filing a reply dated 22.2.2015 (annexed at page 36 of the paper book) and by a further reply dated 7.10.2016. In the reply, the appellant/plaintiff in para nos. 5 and 6 has categorically set out that in compliance of the order dated 14.1.2015 passed by the trial Court inspection of some of documents could not be given as originals of documents were not available with the appellant /plaintiff. It was also stated that for getting copies of the said documents, applications were made before the appropriate authorities i.e. BMC etc. Further in para 6 of the reply it was categorically pointed out that inspection of all the documents which

were available was already given to defendant no.2.

6. Learned counsel for the appellant has drawn my attention to the list of documents which in respect of the statement on behalf of the appellant as referred in order dated 14.1.2015 was concerned, to point out that except the documents at item no.4 electricity bill which was of the year 1986 actually annexed to the plaint (though other electricity bills of the year 1986 were available) and item no.5 Certificate of voter's card of the year 1951 issued by the Election Officer of Municipal Corporation, inspection of all the documents was granted.

7. Grievance of Respondent no.2 is that in addition to this, he had also requested for inspection of the applications dated 6.5.2011 and 11.5.2011 which were referred to in para 8 of the plaint. To this, on behalf of the appellant/plaintiff it is stated an application to obtain certified copies has been made before the Court and that inspection of these documents would be given as and when the same are available.

8. The respondent no.2 in the inspection of documents as granted on 7.1.2015 has also recorded that he has received inspection of the documents as per his letter without prejudice to his rights and contentions.

9. On this background, the learned trial Judge considered the application as filed on behalf of respondent no.2/defendant no.2 for dismissal of the Suit under Order 11 Rule 21 of the Code of Civil Procedure, 1973 for non-compliance of the order to grant inspection.

10. A perusal of the impugned order clearly shows that the learned trial Judge has not applied his mind to the reply which is filed on behalf of the appellant/plaintiff wherein it is pointed out that inspection of all documents that were available was already furnished and that the plaintiff/appellant was in the process of getting other documents and inspection of the same would be given. It was not the case where the plaintiff/appellant was absolutely in breach of the order dated 14.1.2015 but, only in respect to two documents as noted above in the list of documents, inspection was not given. Further in respect of the documents in para 8 of the plaint, it is pointed out to the Court that inspection would be given as and when the certified copies of those documents same are available.

11. The approach of the learned trial Judge in passing the impugned order is quite surprising. Though power has been conferred on the Civil Court under Order 11 Rule 21 of the Code of Civil Procedure Code 1973 the same is required to be exercised judiciously and with more circumspection, taking into consideration

the basic facts particularly when the consequence of the order would be harsh to non suit the Plaintiff. The learned trial Judge ought not to have straight away exercised the power without application of mind to the facts of the case and when more particularly substantial inspection was already granted of the documents which are part of the list of documents.

12. In any event, the learned trial Judge has completely overlooked the contents of the order dated 14.1.2015 which merely records a submission on behalf of the appellant/plaintiff as under :

“ Advocate for the plaintiff has fairly submitted that he is ready to give inspection of the documents mentioned in the list of plaint.”

13. Prima facie, in my opinion, the situation before the trial Court was not so that the learned trial Judge could proceed to exercise power under Order 11 Rule 21 of the Code. It would have been a fair approach on the part of the learned trial Judge to have granted sufficient opportunity to permit the appellant/plaintiff to comply with inspection of the remaining documents and in any event, if such an inspection was not to be granted, the Court was not powerless to appropriately consider the situation by drawing appropriate inference in the adjudication of the Suit rather than to non-suit the appellant/plaintiff.

14. The appellant/plaintiff has made out a strong prima

facie case, balance of convenience is also in favour of the appellant for grant of the reliefs which are prayed for in the Civil application.

15. Accordingly, the appellant/plaintiff is entitled for ad interim reliefs as prayed for in the Civil Application. Civil Application is accordingly allowed in terms of prayer clause (a) which reads thus :

“that pending the hearing and final disposal of the First Appeal the operation, effect, implementation and execution of the impugned order and Judgment dated 12.11.2016 passed in Exhibit 13 and 14 in L.C.Suit No.2173 of 2012 by the Hon'ble City Civil Court be stayed and the respondent no.1 thereby restraining from executing and/or enforcing the Notice u/s 351 dated 27.06.2012 of MMC Act bearing No.D/Bldg/JE/212/351/1137BF and order passed by Asst.Municipal Commissioner 'D' Ward office dated 26.07 2012, for demolition/removal of the suit shop premises bearing shop no.2 Gr.Floor, Pilla Lodge Building, 15 Shankar Seth Road, Bhaji Gally, Grant Road (West) Mumbai-400 007 or otherwise the order passed in A.O. No.1374 of 2012 dated 07-01-2013 be continued.

No costs.

{G.S.KULKARNI, J}