

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER (St) NO.34141 of 2016 with
CIVIL APPLICATION (St) NO.34142 of 2016

Kanhaiya Hiro Devjani Appellant
VS
MCGM .. Respondents

Mr.K.P.Tiwari for Appellant
Mrs.M.R.Bhoir for Respondent nos.1 & 2.

CORAM: G.S.KULKARNI, J
DATE: 15 DECEMBER 2016

P.C.

1. Not on board. Taken on board on a praecipe as moved on behalf of the appellant.
2. Heard Mr.Tiwari learned counsel for the appellant and Mrs.Bhoir learned counsel for the Municipal Corporation.
3. Mr.Tiwari states that the reliefs which is being sought are only against the respondent-Municipal Corporation.
4. The appeal is directed against an order dated 26.11.2016 passed by the Holiday Judge, City Civil Court, Mumbai. By the impugned order, the learned trial Judge referring to an order dated 21.12.2015 in PIL No.88 of 2015 has refused to grant an ad-interim protection. Mr.Tiwari submits that the Municipal Corporation is likely to take action and demolish the structure of the appellant in pursuance of suit notice dated 23.11.2016. He submits that this

Court in a batch of 'Appeal from Orders' by an order dated 5.5.2016 referring to the statement made on behalf of MHADA as recorded by this Court in order dated 14.12.2012 (Appeal from Order No.573 of 2012 etc) had protected similarly situated persons in the Notice of Motions filed by them and that the said Notice of Motions are still pending adjudication. It is submitted that this order is also required to be taken into consideration.

5. Be that as it may, from a perusal of the impugned order which is an ad-interim order, it is clear that the Notice of Motion itself was made returnable on 3.12.2016. Mr.Tiwari informs that the Notice of Motion was not taken up for hearing on that day and it was adjourned and the same is still pending adjudication. In the circumstances, it would be appropriate that the appellant/plaintiff approaches the trial Court and pursues the pending Notice of Motion. Needless to observe that the appellant is at liberty to rely on whatever material he intends to rely in support of his case in the Notice of Motion which will be for the consideration of the learned trial Judge.

6. Considering this position, no interference is called for at this stage. Mr.Tiwari submits that however, his concern is only in regard to the threat of the Municipal Corporation to demolish the suit

structure. He therefore, submits that protection be granted for a limited period so that the appellant/plaintiff can move the trial Court by an appropriate ad-interim application in the pending Notice of Motion.

7. The request is reasonable. It is directed that the respondents shall not take any coercive action if not already taken in respect of the suit structure for a period of one week from today. This is only to enable the appellant/plaintiff to approach the trial Court and seek appropriate orders on the pending Notice of Motion. This limited protection shall not in any manner be construed as any observations on the merits of the matter.

8. The learned trial Judge shall decide any ad interim or interim application or Notice of Motion on its own merits and without being influenced by ad interim order dated 21.11.2016 and this order.

9. Appeal from order is accordingly disposed of in above terms. No costs. Civil Application (Stamp) No.34142 of 2016 do not survive and is accordingly disposed of.

{G.S.KULKARNI, J}

