

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

**APPEAL FROM ORDER STAMP NO.34550 OF 2015
ALONGWITH
CIVIL APPLICATION STAMP NO.34556 OF 2015**

Mr. Rafique Yakub Shaikh

.. Appellant

Versus

The Municipal Corporation of Greater Bombay

.. Respondent

Mr. A. R. Shaikh i/by ASD Associates for the Appellant.

Mrs. M. R. Bhoir for the Respondent BMC.

CORAM : R.M. SAVANT, J.

DATE : 15th JULY 2016

PC.

1 The above Appeal from Order takes exception to the order dated 11.12.2015 passed by the Learned Judge of the City Civil Court, Greater Mumbai, by which order, the application made by the Applicant for interim relief came to be refused. The refusal is on the ground that pursuant to the notice dated 01.07.2015 issued by the Municipal Corporation of Greater Mumbai (For short "the MCGM") the Appellant had filed a Contempt Petition Stamp No.33182 of 2015 in this Court, wherein he had filed an application for interim reliefs for restraining the

Defendant from demolishing the first floor as described in the impugned notice dated 01.07.2015. The Trial Court i.e. the Learned Judge of the City Civil Court was of the view that since an application for interim relief was pending in this Court, it would not be appropriate on the part of the said Court i.e. City Civil Court to grant ad-interim reliefs as requested by the Plaintiff before the said Court. Hence, the application for ad-interim reliefs was not decided on merit, but was decided in view of the fact that this Court was seized with an application for interim reliefs in respect of the said notice dated 01.07.2015 in the Contempt Petition. The Learned Counsel appearing on behalf of the Appellant Mr. A. R. Shaikh points out to this Court that the said Contempt Petition Stamp No.33182 of 2015 has been withdrawn by the Appellant as the Appellant is now interested in prosecuting the instant suit being Suit No.3358 of 2015 and the Notice of Motion filed therein.

2 During the course of the hearing of the above Appeal from Order, the Learned Counsel appearing on behalf of the Appellant sought to contend that the first floor in respect of which the notice dated 01.07.2015 has been issued to the Appellant was also a subject matter of an earlier suit filed by the Appellant being LC Suit No.4104 of 1998. In the said suit, the notice issued under Section 89 of the MRTTP Act, 1966 was under challenge as pursuant to the said notice, the Appellant who was the

Plaintiff in the said suit was called upon to vacate the structure to facilitate to the implementation of the town planning scheme. The Learned Counsel would contend that though the said suit came to be dismissed, the Appellant has filed a First Appeal in this Court being No.297 of 2004 which has been admitted and pending in this Court and that there is an order restraining the MCGM from demolishing the structure of the Appellant.

3 Per contra, it was the submission of the Learned Counsel Mrs. M. R. Bhoir appearing for the MCGM that the notice dated 01.07.2015 is in respect of the alleged unauthorized construction which is carried out by the Appellant. The notice discloses that the dimensions of the unauthorized construction which is put up by the Appellant as a consequence of which a notice was required to be issued under Section 351 of the MMC Act are different than the original structure which is the subject matter of the said First Appeal No.427 of 2004. Since it is also the case of the Appellant that the issuance of the said notice dated 01.07.2015 gives rise to a fresh cause of action, in my view, it is not necessary for this Court to delve into the rival contentions. Since the ad-interim reliefs have been refused on the ground that the application for interim reliefs was pending in this Court in the Contempt Petition filed by the Appellant and since the Contempt Petition has been withdrawn by the Appellant on

05.01.2016, it would be just and proper to direct the Trial Court to decide the Notice of Motion itself rather than consider the application for ad-interim reliefs. Hence, the following directions :-

I) The Trial Court i.e. the Learned Judge of the City Civil Court is directed to hear and decide the Notice of Motion filed by the Appellant for interim reliefs in LC Suit No.3358 of 2015 latest by 30.09.2016.

II) The Learned Counsel Mrs. M. R. Bhoir appearing for the MCGM states that an affidavit in reply to the Notice of Motion would be filed within three weeks from date. Rejoinder by the Plaintiff if any to be kept ready thereafter for being tendered in the Trial Court.

III) The Trial Court i.e. the Learned Judge of the City Civil Court is directed to hear and decide the Notice of Motion having regard to the rival contentions the gist of which has been adverted to in the instant order. The same to be done within the time frame stipulated in the instant order.

IV) Needless to state that the Notice of Motion would be tried on its own merits and in accordance with law and the

contentions of the parties are explicitly kept open for being urged before the Trial Court.

V) During the pendency of the Notice of Motion, both the parties are directed to maintain status-quo in respect of the structure in respect of which notice has been issued under Section 351 of the MMC Act dated 01.07.2015. With the aforesaid directions, the Appeal from Order is disposed of.

4 In view of the disposal of the Appeal from Order, the Civil Application does not survive and to accordingly stand disposed of.

[R.M. SAVANT, J]