

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 240 OF 2016
WITH
CIVIL APPLICATION NO.317 OF 2016**

Saiduddin Babu Khan

..Appellant

Vs.

Mohammed Anwar Ansari & Anr

..Respondents

Mr. S. P. Srivastava for the Appellant

Mr. S. A. Sawant for the Respondent No.1

Mr. Chetan Agrawal for the UOI / Western Railway

CORAM : R. M. SAVANT, J.

DATE : 20th JUNE, 2016

P.C.

1 The order dated 8-12-2015 passed by the Trial Court i.e. the Learned Judge of the City Civil Court, Borivali Division, Dindoshi Mumbai, is taken exception to by way of the above Appeal From Order. By the said order the Notice of Motion filed by the Appellant being Notice of Motion No.2272 of 2014, came to be dismissed.

2 The said Notice of Motion was filed by the Appellant i.e. the original Plaintiff seeking temporary injunction to restrain the Defendant No.1 from carrying out construction touching to the wall of the Plaintiff's construction from the north side and to direct the MCGM to take immediate action in respect of the said alleged unauthorised construction of the

Defendant No.1. In reply to the said Notice of Motion, the Defendant No.2-MCGM took a stand that his structure is situated on railway land and it is therefore the railway authorities who have the jurisdiction to initiate action against the unauthorised construction.

3 The Trial Court has rejected the relief sought by the Plaintiff on the ground that the easementary right of light and air is not being affected as the Plaintiff's structure is situated in a corner having land on two sides i.e. East side and South side. Whereas the construction according to the Appellant is on North side. The Trial Court has also observed that whether the Defendant No.1 is making construction with permission or not is also a disputed fact. The Trial Court also adverted to the stand taken by the Defendant No.2-MCGM that the area wherein the structure is situated is of the railways. The Trial Court as indicated above accordingly deemed it appropriate to dismiss the Notice of Motion.

4 In the above Appeal in view of the stand taken by the Defendant No.2-MCGM, notice was directed to be issued to the Western Railway pursuant to which Mr. Agrawal the Learned Counsel is appearing on behalf of the Western Railway. The Learned Counsel on instructions states that the land on which the structure of the Defendant No.1 is situated on railway land as also the structure of the Appellant is also on the railway land. Since the Trial Court

has already arrived at a conclusion that the easementary rights of the Plaintiff / Appellant to light and air are not affected, there is no warrant to interfere with that part of the order. It is made clear that in the event the railway authorities find the structure of the Defendant No.1 i.e. the Respondent No.1 herein to be unauthorised, they are free to take action in accordance with law.

5 With the aforesaid observations, the Appeal From Order is dismissed.

6 In view of the dismissal of the above Appeal From Order, the Civil Application No.317 of 2016 does not survive and to accordingly stand disposed of as such.

7 However, the statement made by the Learned Counsel appearing for the Respondent No.1 is continued for a period of 4 weeks from date.

[R.M.SAVANT, J]