

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (STAMP) NO. 2510 OF 2017
WITH
CIVIL APPLICATION (STAMP) NO. 2512 OF 2017

Ali Mohammed Zulpherkari .. Appellant

VS.

The Municipal Corporation of
Greater Mumbai & Ors. .. Respondents

Mr. A. Y. Sakhare – Senior Advocate with Ms Shastri i/b. Rakesh
Agrawal for Appellant.
Ms M. M. More for MCGM.

CORAM : M. S. SONAK, J.
DATE: 08 FEBRUARY 2017

P.C :

1] Heard learned counsel for the parties. With their consent and at their request, the appeal is disposed of finally.

2] The challenge in this appeal is to the order dated 21 January 2017, by which, the learned trial Judge has declined interim relief to the appellant (original plaintiff) on the sole ground that the plaintiff's made an incorrect statement to the effect that the suit structure, in respect of which demolition notice has been issued, was the same suit structure, in respect of which the appellant has protection in form of a decree of permanent injunction dated 27 August 2008 in L.C. Suit No. 4362 of 2006.

3] Mr. Sakhare, learned Senior Advocate for the appellant submits that the statement made was only in relation to a very limited part of the structure on the terrace of second floor. In this

regard, Mr. Sakhare invited my attention to pleadings in paragraphs 12 and 13 of the plaint. On such basis, Mr. Sakhare submits that there was no incorrect statement made and the notice of motion was required to be heard and disposed of in accordance with law. In the meanwhile, some ad interim protection was continued and the learned trial Judge was not justified in vacating the ad interim protection which had already been granted.

4] Ms More, learned counsel for the MCGM points out that the structures in question are totally unauthorised and illegal. Whatever the pleadings in the plaint, it appears that the ad interim order was obtained on the basis that the structures covered in the impugned notices were the structures which had protection under the decree. In such circumstances, Ms More submits that there is no case made out to fault the impugned order.

5] In this case, it is possible that same submissions have been made across the bar. However, if the pleadings are perused, the appellant – plaintiff has only stated that the erection of the shed over the second floor, is the structure, which is squarely covered by the earlier notice and consequently the earlier decree dated 27 August 2009. The question relates as to whether such structure is really covered or not. This is a matter which will have to be carefully examined by the learned trial Judge. Ultimately, it is possible that the structure is not covered. However, in the peculiar facts and

circumstances of the present case, it cannot be said that this was a fit case for non suiting the appellant on the basis of the submission which may have been made across the bar. The submissions are made on the basis of the understanding of the scope of the notices and the decrees. It is possible that such understanding is ultimately found to be incorrect. However, that by itself, is not a ground to vacate the ad interim order already granted, solely on the ground of mis statements.

6] For the aforesaid reasons, the impugned order is set aside. The ad interim order granted earlier is restored. The appellant is also directed to maintain *status quo*. The learned trial Judge is requested to dispose of the notice of motion on its own merits and in accordance with law within a period of two months from today. The appellant shall not delay the progress in the notice of motion.

7] All contentions of all parties are left open.

8] Appeal and the civil application are disposed of in the aforesaid terms.

(M. S. SONAK, J.)