

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 723 OF 2017
IN
FIRST APPEAL NO. 889 OF 2010

Mr. S. Sunder .. Applicant
vs.
Brihanmumbai Municipal
Corporation & Ors. .. Respondents

Ms Gauri Jadhav for Applicant.
Ms M. R. Bhoir for MCGM.

CORAM : M. S. SONAK, J.
DATE : 16 MARCH 2017

P.C :

1] The applicant, by this civil application, seeks modification in the interim order dated 7 September 2010 in the following terms:

“(a) This Hon'ble Court be pleased to modify the order dated 7.9.2010 passed by this Hon'ble Court in the common order passed in the above mentioned Civil Application wherein substitution of the prayer clause (a) is required to be substituted with prayer clause (b) in para no. 5 of the said order;”

2] By order dated 7 September 2010, this court, disposed of civil application no. 2447 of 2010 in first appeal no. 885 of 2010, prayers of which, read as follows:

“a. Pending the hearing and final disposal of the abovementioned first appeal the order dt. 27th April 2010 passed by Ld. Judge City Civil Court Mumbai in the Long Cause Suit No. 4285 of 2006 be stayed;

b. Pending the hearing and final disposal of the above mentioned first appeal the Respondent Nos. 1 to 3 be restrained by an order of injunction of this Hon'ble Court from

executing the Notice u/s. 351 of B.M.C. Act and/or the order dt. 27th April, 2010 or from demolishing the suit premises;

c. Ad-interim reliefs in terms of prayer clause (a) & (b) be granted;

d. Any other and further reliefs as this Hon'ble Court deems fit and proper in the circumstances of this case."

3] This court, in its order dated 7 September 2010, allowed the civil application in terms of prayer clause (a). The Corporation was also granted liberty to move this court for modifying / vacating the orders, in the event, the Corporation proposes to start any project of the Solid Waste Management Department.

4] Ms Jadhav, learned counsel for the applicant now points out that the relief in terms of prayer clause (a) applied by the applicant, was in fact, meaningless. This is because the L.C. Suit No. 4285 of 2006 instituted by the applicant had in fact been dismissed by the learned City Civil Court, Mumbai. She submits that the stay upon the decree by which the suit came to be dismissed, is quite futile. She submits that the relief really intended to be obtained and the one which has been granted is in terms of prayer clause (b). The relief in terms of prayer clause (b) only restrains the Corporation from executing its notice under section 351 of the BMC Act demolishing the suit premises. She submits that if the reasoning in the order dated 7 September 2010 is perused, it is clear that the

relief granted is really in terms of prayer clause (b) though, what is referred to is prayer clause (a).

5] There is substance in the submission of Ms Jadhav. Relief in terms of prayer clause (a), cannot be said to have been intended if the reasoning in the order dated 7 September 2010 is perused. The protection really was in the matter of the demolition of the suit structure.

6] Accordingly, it is clarified that the order dated 7 September 2010 grants relief in terms of prayer clause (b) and not prayer clause (a). The civil application is accordingly disposed of.

(M. S. SONAK, J.)

Chandka