

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

**APPEAL FROM ORDER (ST) NO. 3740 OF 2017
WITH
CIVIL APPLICATION (ST) NO.3743 OF 2017
IN
APPEAL FROM ORDER (ST) NO. 3740 OF 2017**

Mr.Kedarnath Dayama & Ors. ..Appellants/Applicants
V/s.
Municipal Corporation of
Greater Mumbai & Ors. ..Respondents

Mr.A.M. Saraogi for the Appellants/Applicants.

Mr.Suniel Sonawane a/w Ms.Madhuri More for the Respondent-
MCGM.

Mr.Satish Kamat for Respondent No.4.

Mr.Anil Mishra for Respondent No.5.

Mr.Nitin Thakur, Junior Engineer K/E Ward B & F Dept.

CORAM : M. S. SONAK, J.

DATE : 01 MARCH 2017.

P.C.

1. The challenge in this appeal is to the order dated 04-02-2017 made by the learned Trial Judge declining an ad-interim relief to the appellants, in Draft Notice of Motion in L.C. Suit No.2292 of 2013.

2. This Draft Notice of Motion was taken out to restrain the Municipal Corporation of Greater Mumbai (MCGM) from demolishing the suit building “Maheshwar Sadan”, in pursuance of notice dated 18-06-2013 issued under Section 354 of the Mumbai Municipal Corporation Act, 1888 (for short 'MMC Act').

3. This suit was instituted in the year 2013 and the appellants-plaintiffs, had taken out Notice of Motion No.1863 of 2013 for the identical purpose of restraining the MCGM from taking any action in pursuance of the impugned notice dated 18-06-2013. The said Notice of Motion was dismissed by the learned Trial Judge by order dated 07-10-2014 by making a detailed order. The observations in paragraph Nos.10, 11 and 13 of this order are relevant and therefore, the same are transcribed below :-

“10. On the other hand the Ld. Advocate for defendant No.5 referred to conclusion in the report obtained by the plaintiff, to support his contention that suit building is in dilapidated condition. He emphasized the expert’s report filed on record by this defendant particularly the one issued by V.J.T.I. To show that after the scientific tests it is opined that the building needs to be pulled down. Thus, according to him, plaintiffs are not entitled to injunction as prayed for.

11. *Ld. Advocate for defendant No.5 also brought to my notice that plaintiff No.5 in this suit has also filed a suit before the Small causes Court being RAD No.660 of 2013 seeking injunction against dispossession, eviction without due process of law. The Court answered all the points in negative against the plaintiff except that the plaintiff was allowed to deposit the arrears of the rent.*

13. *Apparently parties have not been able to resolve the disputed aspects and arrive at negotiations. This Court had also referred the matter for mediation but mediation failed.”*

4. Thereafter, the appellants, instituted Writ Petition No.898 of 2015 in order to challenge MCGM's notice dated 18-06-2013 before the Division Bench of this Court. Upon, the respondents pointing out that there was a Civil Suit pending to challenge the very same notice dated 18-06-2013, the appellants withdrew Writ Petition No.898 of 2015 on 18 October 2016. The order dated 18 October 2016 read thus :-

“The learned counsel for the Petitioners, having taken instructions from his clients, seeks leave to withdraw the petition. Leave is granted.

2. *The petition is dismissed as withdrawn.”*

5. Thereafter, the appellants took out the Draft Notice of Motion, which has been dismissed by learned Trial Judge by order dated 04 February 2017. The same has been dismissed by the learned Trial Judge, *inter-alia* by observing the following :-

“It is also brought on record that the occupants have given an Undertaking on 30-01-2017, that they have arranged a pooja “Rudra Mahayagya” on 25-01-2017 and on humanitarian ground requested the Corporation from proceeding with the demolition of the building. It appears that the building is not fit for inhabitation. Further the Corporation appear to have complied with the directions given by the Hon’ble High Court of Bombay in Writ Petition No.1135 of 2014. The reports submitted by the Structural Engineer after thorough inspection of building in question. Earlier also interim relief has been refused and earlier this Court has specifically made clear that the Corporation is not retrained from proceeding with the demolition, pursuant to the notice issued u/s.354 of the MMC Act. Only interim relief was granted to the extent of water and electricity supply. The defendant/Corporation has also placed on record recent photographs which, prima facie shows that, the building is unfit for inhabitation. Similarly, Defendant No.5 has appraised of earlier orders. This clearly goes to show that the plaintiff is not at all entitled for ad-interim relief. Hence I am not inclined to allow the prayer for ad-interim relief. Hence, following order is passed.

ORDER

1. *Ad-interim relief is refused.*
2. *Certified copy be expedited.”*

6. The learned Trial Judge has basically held that an identical Notice of Motion was dismissed by an order dated 07 October 2014 and there is really no change in the circumstances brought on record for the purpose of revisiting the issue of grant of interim relief. It is to be noted that appellants did not challenge the order dated 07 October 2014 by instituting an appeal. The challenge in Writ Petition No.898 of 2015 was also not to the order dated 07 October 2014 made by the learned Trial Judge.

7. On the basis of certain reports, which the appellants have subsequently obtained, it cannot be said that any case is made out for change of circumstances. If according to the appellants, the reports, referred to in the order dated 07 October 2014 were not correct, it was necessary for them, to have either, place on record, contrary reports at the time of institution of there suit or at least at the time of Notice of Motion No.1863 of 2013 was taken up for consideration. At this point of time, to produce certain reports and on the said basis to urge that there is change in circumstances, cannot be held to be legal and proper. In such circumstances, there

is no error in the exercise of discretion by the learned Trial Judge. There is no case made out to interfere with the impugned order. The appeal is therefore dismissed. There shall however be no order as to costs. The observations are *prima-facie*.

8. At this stage, Mr.Saraogi, submits that the MCGM may be restrained for the period of six weeks to execute its order dated 18-06-2013, since, the appellants would seek recourse before the Hon'ble Apex Court. The electricity and water connection to the suit building has already been disconnected. According to Ms.More the learned counsel for the MCGM states that none of the appellants (except one) are occupying the apartment in the suit building. The learned counsel for the respondent states that the said occupant is not even an appellant in this appeal. Mr.Saraogi, the learned counsel for the appellants however disputes this position. The notice was issued on 18-06-2013. In such circumstances, the MCGM is restrained from taking action in pursuance of the notice for a period of six weeks from today. It is made clear that this is subject to the risk and consequences of the appellants. The appellants also shall not alter the status-quo.

(M. S. SONAK, J.)