

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER (ST) NO. 4268 OF 2017
WITH
CIVIL APPLICATION (ST) No. 4269 of 2017

Sheldon Francis D'Souza

.. Appellant

vs.

The Municipal Corporation of Greater
Mumbai and anr.

.. Respondents

Ms K.P. Reshma Ravi i/b K.P. Ravi for the Appellant.

Ms M.M. More for the Respondent No.1 – MCGM.

CORAM : M. S. SONAK, J.

DATE : 15 MARCH 2017.

P.C. :-

1] Heard Ms K.P Reshma Ravi, learned counsel for the appellant and Ms M.M. More, learned counsel for the Respondent No.1- Municipal Corporation of Greater Mumbai (MCGM).

2] Respondent No.2 - State of Maharashtra appears to be a formal party. In any case, presence of respondent No.2 is not necessary for the purposes of disposal of this appeal.

3] The challenge in this appeal is to the order dated 2 February 2017, by which, the appellant-plaintiff has been declined ad-interim relief.

4] Ms K.P. Reshma Ravi, learned counsel for the appellant, submits that the matter was heard on 1 February 2017 for purposes of ad-interim relief and was adjourned to 2 February 2017 for passing orders. However, in the afternoon session, on behalf of

MCGM, a list of documents came to be filed and such list along with documents was taken on record by learned Trial Judge. She submits that a copy of such list/documents, was never furnished to the appellant and therefore, the appellant had no opportunity to respond to such list/documents. The impugned order, however, relies upon the documents so filed by the MCGM. Ms K.P. Reshma Ravi submits that such procedure violates the principles of natural justice and on this ground itself the impugned order is required to be set aside.

5] Ms M.M. More, learned counsel for the MCGM, states that for the present she is unable to make any statement in the matter. However, she submits that the demolitions have already taken place as observed in the impugned order.

6] The appellant has produced on record the Roznama dated 1 February 2017, which reads thus:

“SU 244/17 N.O.B. T.O.B.

By Precipe

Plff absent.

Adv. Ms. Ravi for Plaintiff present.

Adv. Mr. Khandagale for BMC/Deft. Present.

Adv. Ms. Ravi for plaintiff files draft Notice of motion, along with affidavit. TOR. Leave granted to register. Notice of motion returnable on next date.

Heard Adv. Ms. Ravi for plaintiff as well as Adv. Mr. Khandagale for BMC/Deft.

Matter adjd for Order to 02/02/2017.

L.O.

Exh.2

Adv.Mr. Khandagale for BMC./Deft files list of documents, it is TOR, and marked as Exh.2.”

7] In the Roznama, it is stated that the arguments were heard on the issue of ad-interim reliefs and the matter was adjourned for orders to 2 February 2017. Thereafter, there is an endorsement which is prefixed with the abbreviation “*L.O*”. Upon query, this court was informed that the abbreviation stands for “*later on*”. Thus, it appears that after the matter was closed for order, on behalf of the MCGM a list of documents/documents came to be produced, which were taken on record and marked as Exhibit-2. Perusal of the impugned order also indicates that such documents were taken into consideration by learned Trial Judge for the purpose of making the impugned order.

8] The aforesaid means that some material adverse to the interest of the appellant has been taken into consideration. However, the appellant was deprived of opportunity to make his submissions or file his say in the context of such documents. To this extent, there does appear to be violation of the principle of natural justice. On this short ground, the impugned order is liable to be set aside and is hereby set aside.

9] The MCGM (respondent No.1) is directed to furnish a copy of the list of documents /documents to the appellant/learned counsel for the appellant within a period of one week from today. In case, the MCGM is desirous to file any reply, they are at liberty to do so within a period of one week from today by furnishing a copy of the same to learned counsel for the appellant/appellant. Thereafter, if the appellant wishes to file an affidavit of rejoinder, the appellant may do so within a period of one week thereafter. Learned Trial

Judge is directed to dispose of the main notice of motion itself on merits and in accordance with law, as expeditiously as possible and in any case within a period of six weeks thereafter. In the meanwhile, both the parties shall maintain *status quo* in respect of suit structure.

10] It is made clear that this court has not examined the merits of the matter and the interference is only on the ground that there has been a violation of principles of natural justice. Therefore, all contentions of all parties are kept open for determination by learned Trial Judge.

11] The appeal from order is disposed of in the aforesaid terms. In view of disposal of the appeal from order, the civil application does not survive and the same is also disposed of.

12] All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)

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