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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER ST NO. 5902 OF 2017

WITH

CIVIL APPLICATION (ST) NO. 5903 OF 2017

Sanjay Sushil Bhosale & Ors

...Appellants

Versus

The Assistant Municipal Commissioner, MCGM

...Respondent

Mr Pradeep Thorat, i/b Jitendra Bakliwal, for the Appellants.

Mrs Madhuri More, for the Respondent-MCGM.

CORAM: G.S. PATEL, J

DATED: 14th June 2017

PC:-

1. The Appeal will have to be allowed. It is directed against an order dated 9th February 2017, by which the learned Judge rejected the Plaintiffs' Notice of Motion. The Plaintiffs have come in Appeal.

2. In the Suit, the Plaintiffs sought a restraint order against notices dated 28th August 2014 and 16th September 2014 issued by the Municipal Corporation of Greater Mumbai ("MCGM") under Section 354 of the MMC Act. There appears to be an obvious typographical error in paragraph 7. The learned Judge framed three points for determination and in the tabulation said these were all answered in favour of the Plaintiffs and yet in the concluding

paragraph and operative portion dismissed the Plaintiffs' Notice of Motion.

3. Even leaving that aside, it was brought to the notice of the court that there were parallel proceedings including Writ Petition No. 1135 of 2014 and Appeal from Order No. 1092 of 2014 in this Court. In that Appeal, the Appellants were other shop owners of the same building. They challenged notices by filing separate LC Suit No. 2652 of 2014 and filed a Notice of Motion No. 3977 of 2014. In Appeal, those shop owners were permitted to continue to occupy their shops at their own risks and consequences, subject to filing necessary undertakings before the Corporation.

4. In the present matter, the Appellants/Plaintiffs thus properly invoked the principle of parity and said that the same relief ought to be extended to the Plaintiffs too.

5. Only on ground that the Plaintiffs in the other Suit had adduced other material, as noted in paragraph 9, the learned Judge drew a distinction and declined relief.

6. Mr Thorat for the Appellants points out that in fact by an order dated 14th March 2017, Notice of Motion No. 3977 of 2014 in companion LC Suit No. 2652 of 2014 has been partly allowed. The Corporation is now restrained from demolishing the shops of the plaintiffs concerned in that matter until receipt of the report from the Technical Advisory Committee of the MCGM but subject to continuation of the undertakings that those plaintiffs had given to

this Court in Appeal from Order No. 1092 of 2014. Those plaintiffs were required to notify their willingness to continue the undertakings within seven days. In fact, the order in the parallel suit was passed on 14th March 2017 by the same learned Judge who dismissed the Plaintiffs' Notice of Motion on 9th February 2017.

7. Little purpose is served in asking the parties to go back to a final hearing of the Notice of Motion in this case. Here, the Plaintiffs are owners of shop Nos. 9, 11 and 3 respectively. Justice, equity and any principle of parity require that the same order that was applied to their neighbours should be applied to these Plaintiffs also.

8. Hence, the following order:-

- (a) The Plaintiffs' Notice of Motion is restored to file. It will be got numbered for the record within two weeks from today;
- (b) The Notice of Motion is partly allowed;
- (c) The MCGM is restrained from demolishing the Plaintiffs' Shop Nos. 9, 11 and 3 respectively in pursuance of the impugned notices until receipt of the report from the Technical Advisory committee;
- (d) This is subject to the Plaintiffs' furnishing to the MCGM within two weeks from today an undertaking

that they will occupy and use their shops at their own risks and consequences, and shall not held the MCGM liable or responsible if there any collapse or danger to the noticed structures. Those undertakings must be continuing ones without a time limit;

- (e) If the undertakings are not furnished as aforesaid, the Notice of Motion will stand dismissed and the Plaintiffs will not be entitled to use, occupy or remain in possession of those premises;

9. Further, Suit No. 159 of 2017 will be clubbed and heard along with LC Suit No. 2652 of 2014. Parties will appear before the learned Judge on 20th June 2017. Both Suits will be listed on that date. The learned Judge will issue necessary directions for filing written statements, framing of issues and trial.

10. The Appeal from Order and the Civil Application are disposed in these terms. There will be no order as to costs.

(G. S. PATEL, J)