

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

**APPEAL FROM ORDER (STAMP) NO.9542 OF 2017
WITH
CIVIL APPLICATION (STAMP) NO.9544 OF 2017
IN
APPEAL FROM ORDER (STAMP) NO.9542 OF 2017**

Mr. Bona Domnick D'mello ...Appellant/Applicant

vs.

Municipal Corporation of Greater Mumbai And Anr. ...Respondents

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Mr. Kunal Tiwari, I/b. K. Juris, for the Appellant.

Ms. Madhavi More, for the Respondents.

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CORAM : S.C. GUPTE, J.

DATED : 17 APRIL 2017

P.C. :

. Heard learned Counsel for the parties.

2. The Appeal from Order is admitted and taken up for hearing forthwith by consent of learned Counsel for both parties. The Appeal from Order challenges an order passed by the City Civil Court at Bombay refusing to grant ad-interim relief to the Appellant (Original Plaintiff).

3. The Plaintiff's case is that he is the owner of 15 rooms constructed in the suit property. It is his case that his family has been occupying these rooms along with other rooms for a long time. It is submitted that, sometime in the year 1995, the Plaintiff's father left the house and has since been missing. It is submitted that the Plaintiff's

father was paying assessment taxes to the Defendant Corporation in respect of the rooms held by the family. It is submitted that the family of the Plaintiff continued to be in possession of the same since the time his father left the house in the year 1995. It is submitted that, sometime in the year 2005, according to a family settlement between the members of the family, a portion of land consisting of a chawl of 15 rooms ("suit premises") was allotted to the Plaintiff, whilst the remaining part of the property was allotted to the other family members. It is submitted that, on 16 March 2017, two officers from the office of the Respondent (original Defendant No.2) visited the suit premises and threatened to demolish the suit premises. The Plaintiff thereupon filed the present suit on an apprehension that his premises would be demolished otherwise than by following due process of law.

4. On these facts, the Trial Court was expected to consider the prima facie merits of the case and pass an interim order. It appears that at the hearing of the ad-interim application, the Defendants sought time to file a reply. Whilst the Defendants were given time to file reply, no ad-interim relief was granted to the Plaintiff on the ground that the apprehension of the Plaintiff did not appear to be reasonable considering that the Corporation was not expected to act beyond rules and regulations. It is observed by the Trial Court that the Defendant Corporation is a local body, who is aware of its rights and duties. The Trial Court has also observed that, near the suit property, other family members of the Plaintiff appeared to be making unauthorized construction; and that, in the premises, before passing any effective order on the Plaintiff's Motion, the other side needed to be heard by giving full

opportunity to them. On this reasoning, the Trial Court ought to have protected the Plaintiff by way of an ad-interim order, since prima facie merits of the Plaintiff's case were yet to be considered by allowing the Defendants to contest the interim application. The Defendant Corporation could not be permitted to change the status-quo in respect of the premises without the Court having considered the prima facie merits of the case. If the Defendant Corporation sought time to file its reply, it was for the Trial Court to seek an appropriate undertaking from the Defendant Corporation not to go ahead and demolish the suit premises till the Plaintiff's application was considered in the light of its reply. In the absence of such undertaking, the ad-interim relief had to be granted.

5. In the premises, the impugned order of the Trial Court is set aside. The Trial Court shall hear the Notice of Motion after permitting the parties to complete their pleadings. In the meantime, till the disposal of the Notice of Motion, there will be an ad-interim order, restraining the Defendant Corporation from demolishing the suit premises without following due process of law. As a condition of this ad-interim relief, the Plaintiff shall also maintain status-quo in respect of the suit premises and not create any third party rights or part with possession or change the nature of the suit premises.

6. In view of the disposal of the Appeal from Order, the Civil Application does not survive and the same is disposed of.

(S.C. GUPTE, J.)