

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

**APPEAL FROM ORDER (ST) NO. 9649 OF 2017
WITH
CIVIL APPLICATION (ST) NO. 9651 OF 2017
IN
APPEAL FROM ORDER (ST) NO. 9649 OF 2017**

Jyotirmoy A. Bose

... Appellant.

Versus

Designated Officer, Asst. Engineer
(Bldg. & Fact.) & Anr.

... Respondents

.....

Mr. A.Y. Sakhare, Sr.Advocate a/w Mr. Chirag Shah and Mr. Rushil Mehta
i/b Mr. J.J.Shah for Appellant.

Ms. Madhuri More for Respondents.

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CORAM : S.C.GUPTE, J.

DATE : 20 APRIL 2017

P.C. :

1. Heard learned Counsel for the parties.
2. The appeal from order is admitted and taken up for hearing forthwith, by consent of parties.
3. The appeal from order challenges an order passed by the City Civil Court at Bombay on a Notice of Motion filed by the Appellant (original plaintiff). The suit building consists of a structure of ground and six upper floors. The Plaintiff's suit seeks to challenge demolition of part of 5th and part 6th floors of the suit building and seeks mandatory injunction

directing the Defendant Corporation to restore the suit building to its original position, as it stood prior to the demolition, and also for a perpetual injunction restraining the Defendant Corporation from carrying out any further demolition of the suit building without following due process of law. There is a *status-quo* order passed by this Court. It is, according to the Corporation, in June and September, 2016 that it had carried out the work of demolition. This court, by an order dated 15 December 2016 (passed in A.O.No.1044 of 2016), directed the Municipal Corporation not to take any further action of demolition of the suit building. This court also put the Appellant/Plaintiff to terms, requiring him not to undertake any repairs, renovation or alteration in respect of the suit building. In other words, both parties were to maintain *status-quo* in respect of the suit building. On these facts, the notice of motion was heard before the trial court. The court rejected the Plaintiff's notice of motion observing that a writ petition filed by a tenant of the Plaintiff (the Plaintiff claims to be a landlord of the suit building) was admittedly withdrawn by a tenant and that, in the premises, all contentions raised by the Plaintiff appeared to have been dealt with by this court, when the writ petition was dismissed as withdrawn.

4. The observations are clearly impertinent. The court has not considered, in the first place, what was the scope of scrutiny in the writ petition and circumstances in which the writ petition was dismissed as withdrawn. Besides, it is not known, how the Plaintiff's case in the suit is prejudiced by the fact that the writ petition filed by his tenant was withdrawn by him. Moreover, the Plaintiff relies on several documents, some of which were noted by this court in its order dated 15 December

2016, when it passed the *status-quo* order, referred to above. None of these documents is even considered by the trial court, even for their *prima facie* effect, whilst deciding the Plaintiff's notice of motion. This is clearly impermissible. In the premises, the impugned order deserves to be set aside and the matter to be remanded to the Court for a fresh consideration in accordance with law.

5. The Appeal from Order is, accordingly, allowed by setting aside the impugned order and remanding the Appellant's notice of motion to the City Civil Court at Bombay for a fresh hearing in accordance with law. The court is directed to consider the effect of the documents, relied upon by the Plaintiff, whilst considering the notice of motion afresh. From the photographs produced before this court, it is clear that the entire suit building is not demolished, but only a portion of the building appears to have been demolished. Even this aspect of the matter will be considered by the trial court, whilst deciding the notice of motion. The trial court shall allow the parties to file such further affidavits and evidence as the parties may choose to. There will be a *status-quo* order in respect of the suit building in the meantime. Neither the Municipal Corporation nor the Plaintiff shall take any steps to alter the structure of the suit building in any manner.

6. In view of the disposal of the A.O., the Civil Application does not survive, and the same is also disposed of.

(S.C. GUPTE, J.)

