

Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.760 OF 2015

Kamla Maria Bari	...Appellant
<i>Versus</i>	
The Municipal Corporation of Greater Mumbai	...Respondent

Mr Ranjit Thorat, Senior Advocate, i/b Ashutosh, for the Appellant.
Mrs M Bhoir, for the Respondent/MCGM.

CORAM: G.S. PATEL, J
DATED: 5th June 2017

PC:-

1. The order of 4th June 2015 that is the subject matter of this Appeal denied the Appellant (the original Plaintiff) ad-interim relief. The question before the Trial court was whether the Plaintiff had permission from the Municipal Corporation Greater Mumbai (“MCGM”) for construction of GI sheet perimeter compound wall. On a perusal of the order, it appears that at the time of hearing the learned Advocate for the MCGM tendered certain documents. These documents were not placed on the record in the form of annexures or exhibits to an Affidavit. The Plaintiff was unable to deal with these documents. The documents raised a dispute that was essentially a question of fact, and which the Plaintiff ought to have been given a fair opportunity to address.

2. Mr Thorat for the Appellant submits that the Appellant's Notice of Motion be directed to be heard at an early date. This is reasonable. The MCGM will file a complete Affidavit in Reply to the Motion, annexing all documents, including those relied on at the time of the ad-interim application. The Plaintiff will be given a sufficient opportunity to file a rejoinder.

3. As a general rule, I would strongly recommend that trial court judges not accept documents tendered across the Bar in this fashion. Any documents sought to be adduced must be placed on affidavit, so that they form part of the record. The Affidavit must also correctly reference the document and contain averments as to their correctness. If this is not done, documents received in this fashion, even if referenced in an order, do not formally enter the record. They remain without a supporting averment. Since they are not part of the record as such, they do not get included in the appeal paper book or compilation, and this creates needless inconvenience and controversy in further proceedings. Let an authenticated copy of this order be sent to the Registrar of the City Civil Court and to the Learned Principal Judge of the City Civil Court, with a request to issue the necessary practice note to all judges.

4. The ad-interim order of 9th June 2015 is set aside. The Appeal is allowed.

5. The Plaintiff's Notice of Motion will be disposed of by the learned Judge at the earliest, preferably within four months from the

date of this order. In the meantime the order dated 9th June 2015 directing the parties to maintain *status quo* will continue.

6. The matter is to be listed before the learned Judge for directions on 19th June 2017 to set a schedule for filing replies and rejoinders, and for fixing a date for final hearing. The Trial Court will fix the final hearing on a date convenient to the Court. The Trial Court is not to grant an adjournment on the date so fixed.

(G. S. PATEL, J.)