

Atul

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 196 OF 2015
WITH
CIVIL APPLICATION NO. 254 OF 2015

Arya Vyayamshala (Registered) & Anr ...Appellants

Versus

The Municipal Corporation of Greater Mumbai ...Respondents
& Ors

Mr Abhijeet Rane, for the Appellant.

Mrs Madhuri More, for the Respondent.

CORAM: G.S. PATEL, J

DATED: 13th June 2017

PC:-

1. This Appeal is misconceived. The Plaintiffs filed a suit for a declaration that they were in possession and occupation of certain premises and secondly for a declaration that the rent receipt transferred in the name of the 4th Defendant was null and void. The Plaintiffs also sought an order against Defendants Nos. 1, 2 and 3, viz., the MCGM, the Municipal Corporation and the Assistant Commissioner, to transfer the rent receipt in the names of the Plaintiff.

2. This was the entirety the Suit. There was no other final relief sought. In this suit, the Plaintiffs then filed a Notice of Motion saying that its premises being used as a gymnasium were in disrepair. Prayer (a) of the Notice of Motion sought an interim relief framed like this:

"that this Hon'ble Court may be pleased to allow the Plaintiff to carry out the reconstruction of the whole suit premises;"

3. Clearly this relief was, to put it mildly, ambitious. It travelled well beyond the confines and limits of the Suit. It sought a different relief altogether. It is for this reason that the learned Judge observed, in my view quite correctly, that the suit was simply one for declaration regarding possession without any prayer for reconstruction permission; and that it is settled law that no interim relief can be granted except as a step in aid of final relief. While dismissing the Notice of Motion, the Learned Judge was careful to ensure that the Plaintiffs' right to approach the appropriate authority for reconstruction permission was kept open. This was a specific observation in paragraph 8. Nothing further was needed. Indeed the learned Judge could have done no more than this. Her order is, in my view, faultless.

4. There is no substance in the Appeal. It is dismissed. There will be no order as to costs.

5. The Civil Application does not survive and is disposed of as such.

6. It is however clarified that the Plaintiffs will be at liberty to pursue such applications or remedies regarding repairs and reconstruction as are available to them in law.

(G. S. PATEL, J)