

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLCIATION NO. 4774 OF 2013
IN
FIRST APPEAL NO. 898 OF 2014**

Lucky Restaurant ...Appellant
Versus
Municipal Corporation of Greater Mumbai & Ors ...Respondents

**AND
CIVIL APPLCIATION NO. 4788 OF 2013
IN
FIRST APPEAL NO. 896 OF 2014**

Lucky Restaurant ...Appellant
Versus
Vijay Narayan Patil & Ors ...Respondents

Mr Iram S Memon, *i/b Shoaib I Memon, for the Appellant.*
Mrs MR Bhoir, *for the Respondent No. 1-MCGM in FA/896/14 & for
Respondent No. 6 in FA/898/14.*
Mr Rajesh A Revankar, *for the Respondents Nos. 2 to 5, for the
Respondents in FA/896/14 & for the Respondents Nos. 1 to 5 in
FA/898/14.*

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

PC:-

1. There were two cross suits. Narayan Raghunath Patil, the owner of the premises, filed Suit No. 4141 of 1996 *inter alia* against M/s Lucky Restaurant and the Municipal Corporation of Greater Mumbai (“MCGM”). Patil complained of an illicit encroachment or extension by Lucky Restaurant onto an open space and asked for its removal. The construction in the open space was removed. Before the suit by Patil, Lucky Restaurant filed its own Suit No. 2480 of 1995, in which it sought to protect the structure and challenged a demolition notice under Section 351 by the MCGM. Lucky Restaurant’s suit failed. Narayan Patil obtained a decree. Each of these parties is, therefore, in Appeal in the other’s suit.

2. The position today is that the structure on the open space has been removed. Part of the Lucky Restaurant has been demolished. Lucky Restaurant continues to operate from the portion that currently stands. On behalf of Narayan Patil a statement is made that there is even now an unauthorised construction of about 14 sq. mtrs. against which no action is taken.

3. This is noted as being commonly agreed to be the present situation as of today. This is therefore *status quo*. This position will remain undisturbed pending final hearing of the Appeal, with, however, liberty to the parties to apply should there be any change in circumstances.

4. In the meantime, Narayan Patil has filed an ejectment suit against Lucky Restaurant in the Court of Small Causes at Bombay.

That suit will, of course, proceed on its merits uninfluenced by any of the orders passed in these proceedings.

5. Both Civil Applications are disposed of. There will be no order as to costs.

(G. S. PATEL, J.)