

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (St.) No. 21872 OF 2017
WITH
CIVIL APPLICATION (ST.) No. 21873 OF 2017 IN A.O. (ST.) No.21872 OF 2017

James Cyryl Lobo ... Appellant/Applicant
Vs.
The Municipal Corporation of Greater
Mumbai ... Respondent

Mr. Ranjit Thorat, Senior Advocate i/b. Mr. Pramod Gautam,
Advocate for the appellant/applicant.
Mrs. Madhuri More, Advocate for the respondent/Corporation.

CORAM: MRS.MRIDULA BHATKAR, J.
DATE: 18th August, 2017.

P.C.:

Admit. By consent, the Appeal from Order is heard finally and
decided at the stage of admission.

2. This Appeal from Order takes an exception to the order dated 29th July, 2017 passed by the learned Judge whereby ad-interim injunction is refused. The contention of the learned senior counsel for the appellant/original plaintiff that stop work notice was given under section 354 of Mumbai Municipal Corporation Act (for short M.M.C. Act), however, the structure is complete and therefore, it is does not survive and the Corporation is required to give notice under section 351 of M.M.C. Act. It is further submitted that instead of filing

the affidavit-in-reply, the Corporation produced the photographs across the bar without affidavit and after considering that, ad-interim injunction was refused.

3. The learned counsel for the Corporation has produced the photographs of 14th July, 2017 and 12th August, 2017, against which the learned senior counsel for the appellant produced one photograph. All these photographs are taken on record. Photographs of 14th July, 2017 is marked as Exhibit A, photographs of 12th August, 2017 is marked as Exhibit B and photograph produced by the learned senior counsel for the appellant disclosing the status of the building as on today, i.e., 18th August, 2017 is marked as Exhibit C.

4. The Corporation is directed to file affidavit-in-reply in Notice of Motion, which is pending before the trial Court within two weeks from today. Thereafter, the appellant/plaintiff may file rejoinder, if any, within one week. The documents, if any, which are relied on are also to be exchanged. The parties to appear before the trial Court on 22nd August, 2017, as I am told that the matter is scheduled on that day. Thereafter the trial Court to hear Notice of Motion and decide it on

merits within six weeks. Till then, the appellant shall not make changes of any kind in the structure as per the photograph (Exhibit C) and not to take steps in respect of completion of the said structure. The Corporation also shall not take any coercive action till then.

5. Appeal from Order is disposed of. Civil Application is also accordingly disposed of.

(MRIDULA BHATKAR, J.)