

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER (ST.) No. 21991 OF 2017
WITH
CIVIL APPLICATION (ST.) No. 21992 OF 2017
IN
APPEAL FROM ORDER (ST.) No. 21991 OF 2017**

Ishaq Yassin Khan ... Appellant/Applicant
Vs.
Municipal Corporation of Greater Mumbai
& Ors. ... Respondents

Mr. Yousuf Khan, Advocate for the appellant/applicant.
Ms. Madhuri More, Advocate for respondents/BMC.

CORAM: MRS.MRIDULA BHATKAR, J.
DATE: 7th August, 2017.

P.C.:

Upon mentioning, taken on production board.

2. This Appeal from Order is directed against the order dated 25th July, 2017 passed by the Ad-hoc Judge, City Civil Court, Borivali Division, Dindoshi, Mumbai refusing ad-interim relief. The plaintiff/appellant was served with the notice dated 8th June, 2017 under section 354-A of Mumbai Municipal Corporation Act directing him to stop work. It is alleged that the appellant/plaintiff has constructed unauthorized structure of ground floor plus 1st floor made

with brick masonry walls. A.C. Sheets, Ladi-Coba slab etc. The learned counsel for the appellant has submitted that the designated officer of the Corporation has passed the order on 15th June, 2017 and directed that the structure shall be removed, as it is unauthorized. The learned counsel has submitted that in the said order, the officer has observed that the appellant/plaintiff did not submit any reply along with the documents towards the permission, however, in fact the appellant/plaintiff has produced the documents, which were not considered by the said officer. He submitted that City Survey No. 608 Part and 668 Part, Bandra are declared as slum where the structure of the appellant stands. He submitted that the appellant is residing in the said structure and if it is demolished, then he will be without residence.

3. Per contra, the learned counsel for the Corporation has submitted that the Officer of the Corporation has passed reasoned order holding that the structure is unauthorized and till 15th June, 2017 no documents were produced before the officer. She further relied on the order passed by the Ad-hoc Judge, City Civil Court.

4. Perused the impugned order of Ad-hoc Judge, City Civil Court.

The learned Judge has referred the order passed by the Corporation and it has also stated that the documents were not taken into consideration. However, it has also referred that a reply dated 13th June, 2017 appear to have been given by the plaintiff but the stamp affixed on the copy of the notice does not disclose exact date of the receipt of the said reply. I have perused the said stamp showing acknowledgement by the Corporation, however, I find a ink blot on the date and therefore, nobody can read the date when the Corporation had received the said reply. Moreover, the learned Judge has considered some documents at the time of refusing ad-interim relief. At the time of hearing of this Appeal from Order, no documents is produced showing the impugned structure is part of Survey No. 608 Part and 668 Part which is declared as slum. In view of this, Appeal from Order is summarily dismissed.

5. I am informed that the trial Court has fixed the matter for hearing of Notice of Motion in November, 2017. However, as prayed by the learned counsel for the appellant, this matter is fixed before the trial Court on 23rd August, 2017. The parties are directed to appear before the trial Court on 23rd August, 2017. The Corporation to file affidavit-in-reply.

6. In view of dismissal of Appeal from Order, Civil Application does not survive and the same is also accordingly disposed of.

(MRIDULA BHATKAR, J.)