

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER (St.) No. 23219 OF 2017
WITH**

CIVIL APPLICATION (St.) No. 23220 OF 2017 IN A.O. (ST.) No.23219 OF 2017

Javed Shaikh

M/s. Sunny Cabels and Datacom Pvt. Ltd. ... Appellant/Applicant
Vs.

Municipal Corporation of Greater Mumbai
through Asstt. Engineer (B & F) ... Respondent

Mr. Atul Damle, Senior Advocate i/b. Mr. Amarendra Mishra for the
appellant/applicant.

Mr. A.Y. Sakhare, Senior Advocate a/w. Ms. Vidhya Gharpure, Ms.
Madhuri More for the respondent.

CORAM: MRS.MRIDULA BHATKAR, J.
DATE: 21st August, 2017.

P.C.:

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

2. By this Appeal from Order, the order dated 10th August, 2017
passed by the Ad-hoc Judge, City Civil Court, Dindoshi, Mumbai is
under challenge. By this order, the learned Judge has rejected ad-
interim injunction in Draft Notice of Motion of 2017 in L.C. Suit No.
2290 of 2017. The appellant/original plaintiff has filed the suit
thereby challenging the notice dated 23rd August, 2016 given by the
Corporation under section 351 of the Mumbai Municipal Corporation

Act. Notice is given in respect of demolition of unauthorized structure admeasuring 1500 sq.ft. ground floor plus 1500 sq.ft. mezzanine floor approximately.

3. The learned senior counsel for the appellant has submitted that the trial Court has not considered the documents which were filed by the appellant/original plaintiff in the suit. He has submitted that the suit premises falls under slum and in support of his submissions, he relied on the Occupiers card issued by the Maharashtra Slum Areas (Improvement Clearance and Redevelopment) Act, 1971 by the Competent Authority on 17th March, 1977. He has further submitted that as the structure is under slum, the Corporation cannot give notice. In support of his submissions, he relied on the judgment of this Court in the case of **Ramawatar Babulal Jajodia vs. Municipal Corporation of Greater Mumbai, reported in 2014 (1) Bom.C.R. 6.** wherein the Hon'ble Judge has held that if the suit premises is a slum, then Slum Act itself provides for taking effective steps against unauthorized occupier and unauthorized structure.

4. The learned senior counsel for the respondent, while assailing the submissions of the learned senior counsel for the appellant, read

over paragraphs 4, 5,6, 7, 9, 10 and 11 of the plaint. He has further submitted that the notice was issued on 23rd August, 2016 which was under section 351 of the M.M.C. Act. However, the appellant/plaintiff did not reply to the notice but the earlier owner of the premises Mr. K.J. Xavier filed reply and produced documents. The designated officer of the Corporation considered all the documents produced by Mr. Xavier and rejected the case of Mr. Xavier and upheld the action of the Corporation of issuance of notice by order dated 7th December, 2016. The learned senior counsel has further submitted that the occupier card dated 17th March, 1971 on which the plaintiff relies on is a photocopy and no original document is produced. He submitted that the suit premises as per the Agreement dated 30th October, 1999 which is referred to in the plaint, Mr. Xavier initially was having a room admeasuring 280 sq.ft. However, today the suit premises is of 1500sq.ft. on the 1st floor and 1500 sq.ft. on the mezzanine floor.

5. Heard the submissions. Perused the impugned order passed by the learned Judge of the City Civil Court. In view of the submissions made by the learned senior counsel of both the sides, I am of the view that no interference is required in the order passed by the learned Judge of the City Civil Court. Hence, Appeal from Order

is dismissed.

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

7. The learned senior counsel for the appellant submitted that pool table and other accessories are lying in the premises. The appellant/plaintiff seeks one week's time to remove the pool table and other accessories.

8. Time granted till 23rd August, 2017 to remove the pool table and other accessories from the suit premises.

(MRIDULA BHATKAR, J.)