

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER (St.) No. 24230 OF 2017
WITH**

CIVIL APPLICATION (St.) No. 24231 OF 2017 IN A.O.(ST.) No.24230 OF 2017

Pratap Rajaram Chavan ... Appellant/Applicant

Vs.

Municipal Corporation of Greater Mumbai
through Asstt. Commissioner & Anr. ... Respondents

Mr. Jitendrakumar G. Damani, Advocate for the appellant/applicant.
Mr. P.K. Dhakephalkar, Senior Advocate a/w. Mrs. Madhuri More,
Advocate for the respondents.

CORAM: MRS.MRIDULA BHATKAR, J.
DATE: 23rd August, 2017.

P.C.:

In this Appeal from Order, the appellant/original plaintiff has challenged the order dated 21st August, 2017 passed by the learned Judge of the City Civil Court, Mumbai thereby refusing the ad-interim relief in Notice of Motion No. 2824 of 2017 in L.C. Suit (St.) No. 8611 of 2017.

2. The learned counsel for the appellant has submitted that the order of the trial Court dated 21st August, 2017 is not uploaded and therefore, it is not available, so only the operative portion that ad-interim injunction is rejected, is produced before the Court.

3. The learned counsel for the appellant has submitted that the appellant is an occupier and owner of one Sheetal Restaurant and Bar and Sheetal Building at L.B.S. Marg, Kurla. The Corporation has not given to him proper notice under section 354 or section 351 of Mumbai Municipal Corporation (M.M.C.) Act. The so-called notice dated 11th August, 2017 which is given under section 354 of M.M.C. Act is illegal. He submitted that the Corporation ought to have given notice to the appellant under section 351 of M.M.C. Act with 15 days notice. The main contention of the learned counsel is that the due process of law is not followed by the Corporation in giving notice under M.M.C. Act. The learned counsel further submitted that earlier notice dated 3rd August, 2017 which was issued under section 354 of M.M.C. Act was not served on him. Secondly, he submitted that the building cannot be classified under "C-1" category, as the Corporation has not carried out the structural stability inspection and report objectively. He submitted that the Corporation and developer are hand-in-glove and therefore, such notice is given. He further submitted that the report of his architect is produced before the trial Court stating that the building is structurally stable and is under "C-3" category. The learned counsel submitted that if at all conflicting report of the structural stability is produced, it is obligatory on the part

of the Corporation to refer the matter to the Technical Advisory Committee (TAC) which is headed by Director (ES&P) with atleast 3 other members, i.e., City Engineer, Chief Engineer (DP) and Chief Engineer (P&D). He submitted that the Corporation is to be directed not to take any coercive action and not to demolish the building. He submitted that the building is to be kept intact and not to be demolished and he should be given an opportunity to put up his say before the Court. He also undertakes that the appellant shall not conduct his business on the suit structure till the hearing of the Notice of Motion.

4. The learned senior counsel for the Corporation submitted that in the last week of June, 2017, a portion of slab of Sheetal Cinema collapsed and thereafter the corporation carried out survey and the report of the structural stability was submitted by the Architect and expertise of the Corporation and the building was classified in "C-1" category. The Corporation found the structure was unauthorizedly extended and so the notice under section 354 of M.M.C. Act was issued by the Corporation on 3rd August, 2017 to the appellant, who is owner and occupier of one Sheetal Restaurant and Bar and Sheetal building. The reply was given by the appellant on 14th

August, 2017 and designated officer of the Corporation by an order dated 18th August, 2017 has rejected the plea of the appellant and passed the order that the action as per provision of M.M.C. Act and M.R.T.P. Act will be initiated against the appellant. The learned senior counsel submitted that the affidavit of designated officer Mr. Shrikant Bhalkar, Assistant Engineer (B&F) is filed along with the documents before the trial Court.

5. Considered the submissions. The order of the trial Court rejecting the ad-interim relief is not before the Court. However, considering the order of the designated officer of the Corporation and the reply given and also the submissions of the learned counsel for the appellant, I am of the view that it is not a case where interference of this Court is required at this stage. Notice of Motion is to be heard.

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

(MRIDULA BHATKAR, J.)