

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER (St.) No. 25974 OF 2017
WITH
CIVIL APPLICATION (ST.) No. 25975 OF 2017**

Gunjan Shantilal Zatakia ... Appellant/Applicant
Vs.
Municipal Corporation of Greater
Mumbai & Anr. ... Respondents

Mr. Gautam Ankhad a/w. Mr. Darshan Mehta, Mr. Naresh Chedda
and Ms. Krithika Anand i/b. M/s. Dhruve Liladhar & Co., Advocate for
the appellant/applicant.

Mrs. Madhuri More, Advocate for the respondent nos. 1 and
2/Corporation.

CORAM: MRS.MRIDULA BHATKAR, J.
DATE: 6th November, 2017.

P.C.:

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

2. This Appeal from Order is directed against the order dated 1st
September, 2017 passed by the learned Judge of City Civil Court,
Mumbai thereby dismissing the Notice of Motion No. 1049 of 2016 in
L.C. Suit No. 579 of 2016 The appellant/plaintiff has filed the suit
against the respondent/Corporation wherein the notice dated 28th
November, 2015 is challenged. The respondent/Corporation has
given the notice under section 351 of Mumbai Municipal Corporation

Act for removal of unauthorized construction of spiral staircase from Flat Nos. 702A and 702B leading to terrace, unauthorized construction of room below the tank with glass window with toilet, unauthorized covering of elevator feature with glass window and unauthorized construction of thick wall on terrace.

3. The learned counsel for the appellant has produced the original Agreement of Sale dated 19th December, 1990 between Hiranandani Constructions Pvt. Ltd. and parents of the plaintiff. The learned counsel has submitted that the parents of the plaintiff have gifted these two flats to the appellant/plaintiff and the appellant is residing in those flats since 1990. He submitted that these two flats are terrace flats with enclosures of french door below the water tank which is a portion of his terrace. He submitted that some portion of the terrace is exclusively purchased by the plaintiff's parents from the builder and there is one common staircase going from these flats to the terrace. He has submitted that the Corporation, without verifying the plans of the building, has issued the notice. The learned counsel, in support of his submissions, relied on the correspondence between the Corporation and the Secretary/Chairman of the Eden IV Cooperative Housing Society Ltd., Hiranandini Gardens, which took

place in October 2015. He pointed out that in those letters, the Assistant Engineer (B& F), 'S' Ward, Designated officer-II has informed the Secretary/Chairman and the appellant/plaintiff that necessary action will be initiated on receipt of the approved plan. The learned counsel has argued that without verifying or receiving the approved plan of the flats, the Corporation has hastily issued the notice, which is illegal, as the structures mentioned in the notice are in existence right from the purchase of the flats.

4. The learned counsel for the Corporation, while opposing this Appeal from Order, has submitted that the appellant/plaintiff could not produce any proof to show that the structures, which are claimed to be unauthorized in the notice, are in existence right from the construction of the flats. The learned counsel has further submitted that the order passed by the learned trial Judge is correct and legal and is to be maintained. The learned counsel further submitted that the appellant not only has fitted the sliding doors and treated it as room but also constructed WC on the terrace and it is without the permission of the Corporation.

5. Heard the submissions. Perused the order passed by the trial

Court. Perused five photographs of the disputed structures produced by the appellant. The same is taken on record and marked as Exhibit X, X-1, X-2, X-3 and X-4 for identification. It appears from the record that the plan of the building is not available with the appellant and therefore, he could not produce it before the trial Court and also before BMC who passed the order after issuance of notice. However, it is the duty of the appellant to produce the plan and make it available by contacting the builder who got the plan sanctioned from the Corporation. However, it appears that the said builder is not made a party to the proceedings. The learned counsel for the appellant submitted that the appellant/plaintiff will make the builder party to the proceedings before the trial Court so that the plans can be produced. This submission of the learned counsel for the appellant appears acceptable and fair.

6. The photocopies of the Agreement was before the trial Court and the original documents are produced before this Court. On perusal of the Agreement, it is found that both the flat Nos. 702A and 702B are the terrace flats. The flats are purchased with exclusive ownership of a portion of terrace, however, there is no mention of spiral staircase going from the flats to the terrace, though there may

be possibility, as this is subject to proof of fact at the time of trial and it is matter of evidence.

7. In the Agreement, there is no mention of fitting of sliding doors and hence it appears unauthorized. The learned counsel for the appellant submitted that the appellant is ready to remove the sliding doors which are below the water tank. The learned counsel submitted that in respect of WC which is on the terrace, the appellant will move an application for regularization of the same to the Corporation within four weeks. This statement made by the learned counsel is accepted. In view of this, I pass the following order:

“The order dated 1st September, 2017 passed by the learned City Civil Court Judge is modified thus:

- (i) The common spiral staircase from Flat nos. 702-A and 702-B to the terrace is protected till the conclusion of the trial;
- (ii) The sliding glass doors on the terrace are to be removed by the appellant within two weeks from today;
- (iii) The appellant may move an application to the Executive Engineer (B & F) Proposal, Eastern

Suburb, Municipal Corporation for regularization of WC on the terrace within four weeks. If the application is not moved within four weeks, then the Corporation is free to demolish the WC on the terrace;

- (iv) The appellant may also move an application for regularization of thick wall dividing the two structures within four weeks.
- (v) The Corporation, after receiving the Applications for regularization and after obtaining the plan from its office or from the builder or from the party, shall decide the Applications for regularization within two months. For three months, the Corporation not to take any coercive action. The trial Court to take note of it.

8. With this, Appeal from Order is disposed of. Civil Application is also accordingly disposed of.

(MRIDULA BHATKAR, J.)