

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.3446 OF 2017
IN
FIRST APPEAL st. NO.30283 OF 2017

Babulal Jain & Ors. ... Applicants
Vs.
Pawan Bacharaj Chandan & anr. ... Respondents

Dr.Birendra Saraf with Ms.Pooja Kshirsagar i/b Sheetal Mehta for the
Applicant
Mrs.M.R. Bhoir for Respondent No.2 – Corporation

CORAM: MRS.MRIDULA BHATKAR, J.

DATE: DECEMBER 5, 2017

P.C.:

1. This Civil Application is filed by 31 applicants for granting leave to file appeal against the judgment and order dated 19.6.2017 passed by the learned Judge of the City Civil Court in Suit No.2683 of 2011. The suit was filed by respondent No.1 i.e., original plaintiff, thereby challenging the notice issued by the Corporation on 22.3.2010 u/s 53 of the MRTP for showing cause as also challenging the notice dated 28.11.2011 u/s 488 of the Mumbai Municipal Corporation Act for demolition. The suit was dismissed after trial on 19.6.2017 against which the original plaintiff filed First Appeal (stamp) No.29032 of 2017.

2. The present applicants are the occupiers of the flats, shops or premises in the suit building. It is submitted that the Developer i.e., the original plaintiff was prosecuting the suit by challenging the notices of the Corporation and, therefore, these applicants did not file any application for intervention. However, the suit is dismissed on 19.6.2017 and the Corporation now has given notices u/s 488 of the MMC Act on 7.10.2017 to all the 31 occupants and, therefore, the applicants have moved the application seeking leave to file appeal as they are going to suffer directly due to the dismissal of the suit and the demolition of the premises.

3. Learned Counsel for the applicants further submitted that the applicants are aggrieved by the dismissal of the suit because the stay which was in operation in favor of the occupants is hereby vacated and, therefore, further notices u/s 488 are issued by the Corporation. The learned Counsel submitted that therefore, this application for leave to appeal is filed without prejudice to the rights of the applicants to file separate proceedings challenging the impugned notices u/s 488 issued by the Corporation.

4. Learned Counsel for the Corporation filed reply to this application. The learned Counsel while opposing the application has submitted that the applicants were aware of this prosecution and they should have filed separate and independent proceedings at the relevant time or ought to have joined in the said suit filed by the Developer. However, they all failed to take necessary action at the relevant time and therefore, they are not to be allowed to file a separate appeal. It is further submitted that at present notices u/s 488 are issued pursuant to the order of dismissal of the suit which was filed by the respondent/original plaintiff alone.

5. Learned Counsel for Respondent No.1 supports the case of the applicants.

6. Considered the submissions of the parties. Stay was in operation and in favor of the present applicants during the pendency of the suit and due to the dismissal of the suit, the premises of the applicants are going to be demolished and hence, in view of this, the application is allowed in terms of prayer clause (a).

(MRIDULA BHATKAR, J.)