

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 734 OF 2016

Mohammed Azam Tanki & Ors. ..Appellants
VS.
The Municipal Corporation for
Greater Mumbai ..Respondent

Mr. Yusuf Iqbal Yusuf with Mr. Neville M and Ms Shaista Pathan i/b
Yusuf & Associates for Appellants.
Ms M. M. more for Respondent – MCGM.

CORAM : M. S. SONAK, J.
DATE: 10 JANUARY 2017

P.C :

1] The appellants' appeals order dated 7 October 2015 made by the City Civil Court (trial Court) rejecting the appellants' notice of motion seeking interim restraint upon execution of notice dated 11 January 2012 issued by the Municipal Corporation of Greater Mumbai (MCGM) under Section 351 of the Mumbai Municipal Corporation Act, 1888 (said Act).

2] The ad interim order was operating in favour of the appellants since 9 March 2012. After the impugned order was made, this Court, by its order dated 8 December 2015 has continued the interim order by observing thus:

“1 Admit. Learned counsel for the respondent waives service.

2 During the pendency of this appeal, the respondent shall not remove or pull down, demolish or disturb the suit premises pursuant to the show cause notice dated 11th

January, 2004 and the order dated 18th February, 2004. It is made clear that this Court has not stayed the trial of the suit filed by the plaintiff. The learned trial Judge is directed to proceed with the trial if the same is ready.

3 I have perused the civil application with the assistance of learned counsel for the applicant and I am of the prima-facie view that the applicant had produced certain plans before the learned trial Judge in support of the plea of the applicant that the applicant had applied for permission for carrying out repairs of the suit structure prior to 1962. It is made clear that the observations made in this order are prima-facie. The learned trial Judge shall dispose of the suit on its own merits after evidence is recorded by the trial Court.

4 The civil application is accordingly disposed of in aforesaid terms. No order as to costs.”

3] Learned counsel for the parties confirms that the suit is at the stage of trial. The appellants / plaintiffs are due to file their affidavit in lieu of examination-in-chief on 19 January 2017, which is the scheduled date. Learned counsel for the appellants confirms that such affidavit in lieu of examination-in-chief will positively be filed on 19 January 2017 without seeking any adjournment. This statement is accepted.

4] At this stage, rather than, permit execution of the impugned notice, it will be appropriate if the *status quo* is maintained until disposal of the suit, particularly since the trial in the suit is to

commence. Necessary directions can always be issued to the trial Court to expeditiously dispose of the suit itself.

5] Accordingly, the impugned order dated 7 October 2015 is set aside. The ad interim order is restored. The same is to operate until the final disposal of the suit. The trial Court is directed to dispose of the suit as expeditiously as possible and in any case within a period of six months from today.

6] All the parties to co-operate with the trial Court in expeditious disposal of the suit, in particular, the appellants shall not seek any unnecessary adjournment or protract the suit now that there is an ad interim order is operating in their favour.

7] It is made clear that all observations in the order impugned in this appeal or for that matter the orders made by this Court are only *prima facie* and the learned trial Court need not be influenced with any such observations at the stage of disposal of the suit finally.

8] The appeal is disposed of in the aforesaid terms. There shall be no order as to costs.

9] All concerned to act on basis of authenticated copy of this order.