

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO.1676 OF 2016

Shri.Ramashankar Ramdev Pandey ..Appellant
V/s.
Municipal Corporation of Gr.
Mumbai & Ors. ..Respondents

Mr.A.R. Pandey for the Appellant.
Ms.M.R. Bhoir for the Respondent-MCGM.
Mr.Irani for Respondent No.-2 present in person.

CORAM : M. S. SONAK, J.

DATE : 14 FEBRUARY 2017.

P.C.

1. Heard Mr.A.R. Pandey the learned counsel for the appellant, Ms.Bhoir the learned counsel for the Municipal Corporation of Greater Mumbai (MCGM) and Mr.Irani the respondent No.2, who appears in person.

2. At the request of and with the consent of the learned counsel for the parties and Mr.Irani, this appeal is disposed of finally at this stage itself.

3. The challenge in this appeal is to the order dated 12 November 2016 by which the Trial Court, has exercised its power under Order 11 Rule 21 of the C.P.C. and on the said basis, dismissed the appellant's L.C. Suit No.2173 of 2012.

4. By order dated 14-01-2015, the appellant-plaintiff was required to offer inspection of original documents referred to in the list of documents (Page 23 of the appeal memo) to the respondents i.e. defendants in the Suit. It is the case of the appellant that on 17-01-2015, such inspection was offered, except, insofar as originals documents in relation to Serial No.4 and 5 i.e. the Electricity Bills for the year 1986 and the Certificate of Voter Card for the year 1951, onwards issued by the Election Officer of MCGM. The learned counsel for the appellant-plaintiff states that the xerox copies of the said documents were however offered.

5. In the impugned order, the learned Trial Judge has made reference to affidavit dated 12 February 2015 filed by the appellant and has stated that in the said affidavit there is an admission that the appellant plaintiff failed to give inspection of the original documents filed by him along with the plaint and therefore, the suit was required to be dismissed in exercise of the powers confirmed under Order 11 Rule 21 of the C.P.C.

6. Mr.Pandey the learned counsel for the appellant, by inviting my attention to the averments made in paragraph Nos.5 and 6 of the appellants affidavit dated 12 February 2015 submits that there is no such admission as was recorded in the impugned order. The reading of paragraph Nos.5 and 6 in their entirety makes it clear that inspection was offered on 17-01-2015 of all documents except the documents at Serial Nos.4 and 5. In any case, Mr.Pandey submits that the impugned order dismissing the appellants suit is quite harsh and in case there was any controversy of whether inspection was given or not, the learned Trial Judge could have once

again fixed the date and time in order to ensure that inspection is re-offered. Mr.Pandey submitted that at the highest some reasonable amounts towards cost could have been imposed upon the appellant but the order for dismissal of the suit, in the facts and circumstances of the present case is too harsh and onerous and therefore warrants interference.

7. Mr.Irani, the respondent No.2 who appears in person states that on 17-01-2015, no inspection as such was offered. However, he also admits that inspection of some documents (very few) was offered. Mr.Irani, again submits that the documents at Serial Nos.4 and 5 are quite vital, since, on the basis of such documents, the appellant has obtained interim relief. Mr.Irani further submits that if such documents are not available then, the interim relief ought not to continue. On these grounds, Mr.Irani submits that the impugned order may not be interfered with.

8. Mr.Irani without prejudice submits that in case inspection is to be re-offered, a date and time may be fixed by this Court itself. Besides, if on the appointed date and time no inspection is offered then the appeal be treated as dismissed. Mr.Irani clarifies that the inspection should be of the original documents and not the xerox copies.

9. Ms.Bhoir submits that there is no infirmity in the impugned order and therefore the same may not be interfered with.

10. Having heard the learned counsel for the parties and Mr.Irani, the respondent no.2 who appears in person, it appears that

some sort of inspection did take place on 17-01-2016. If paragraph Nos.5 and 6 of the affidavit dated 12 February 2015 are read in their entirety, it cannot be said that there is blanket admission as such on the part of the appellant. The appellant states that some inspection was given on 17-01-2015 but no inspection was made available in respect of the two documents i.e. at Serial Nos.4 and 5. Besides, Mr.Pandey is right that in a situation of this regard, some cost could have been imposed upon the appellant rather than dismiss the suit itself.

11. Insofar as the grievance of the Mr.Irani is concerned, if it is really the documents at serial Nos.4 and 5 which were instrumental in securing the order of the injunction, leave can always be granted to Mr.Irani to vacate the injunction order passed by the learned Trial Judge. However, the order of dismissal of the suit in its entirety is harsh in the facts and circumstances of the present case.

12. In addition to the documents referred at page No.23 of the paper book, the appellant has agreed to give inspection of the applications dated 6 May 2011 and 11 May 2011 referred in paragraph 8 of the plaint. Since the appellant states that the copies of such applications obtained under the RTI from the MCGM are now available with the appellant.

13. This appeal is accordingly disposed of with the following order:

- a] The appellant to offer inspection of the original documents referred to at Serial Nos.1,2,3 and 6 to 12

(as per list at page No.23 of the paper book) to the respondents on 18.2.2017 at 4.30 p.m. in Bar Room of the Small Causes Court at Mumbai. Mr. Pandey, learned counsel for the appellant, states that such inspection will be offered by him personally in the Bar Room to Mr. Irani as well as any Officer/ Advocate of the MCGM;

b] In addition to the aforesaid documents, the appellant will also give inspection of the applications dated 6.5.2011 and 11.5.2011 referred to in paragraph 8 of the plaint (copies obtained under RTI);

c] It is clarified that in respect of court proceedings certified copies are to be treated as originals. Similarly, in respect of documents obtained by the appellant from the MCGM, the copies obtained under the RTI should be treated as originals. In respect of rest of the documents, however, inspection of the originals is to be offered;

d] In case, there is any dispute at the stage of offer/taking of inspection, the appellant is directed to file the originals as explained above before learned Trial Judge on 23 February 2017 along with a memo to that effect. The respondents can thereafter take inspection before learned Trial Judge, so that, the controversy is minimized;

e] The appellant has offered to pay and in any case he is directed to pay costs of Rs.10,000/- to respondent No.2 on 18 February 2017. Such costs to be paid by way of Demand Draft in the name of respondent No.2 Mr. Irani;

f] In case, there is any breach in the matter of offer of inspection, this appeal shall be deemed to have been dismissed and the impugned order shall be deemed to have been confirmed;

g] The respondents shall not insist upon inspection of original documents at serial Nos.4 and 5, since, it is the case of the appellant that such documents are not in his possession. The appellant is at liberty to take out such proceedings as are available under the law for either securing the production of the original documents or for leading secondary evidence. Such application, if made, will have to be decided, in accordance with law and on its own merits;

h] Respondent No.2 Mr.Irani is at liberty to apply to learned Trial Judge for vacation of interim reliefs, which presently in operation on the ground relating to documents at serial Nos.4 and 5 in the list at page 23 of the paper book. Such application will be considered on its own merits and in accordance with law. This court has expressed no opinion in the matter and therefore, all contentions of all parties are kept open. Such

application shall however, be considered on its own merits, notwithstanding the circumstance that the interim reliefs was earlier refused by the Trial Judge, but only granted by this court;

i] Subject to the aforesaid, the impugned order is set aside and L.C. Suit No. 2173 of 2012 is restored to the file of learned Trial Judge;

j] The learned Trial Judge is requested to dispose of the suit as expeditiously as possible and in any case within a period of one year from today; and

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

(M. S. SONAK, J.)