

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER (ST) NO. 5316 OF 2018
WITH
CIVIL APPLICATION (ST) NO. 5318 OF 2018
IN
APPEAL FROM ORDER (ST) NO. 5316 OF 2018

Gajanan Narayan Mahadik

..Appellant

v/s.

The Municipal Corporation of
Gr. Mumbai.

..Respondents

Mr. B.S.Shukla for the Applicant/Appellant
Mrs. Madhuri More for the Respondent-BMC.

CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 19th MARCH, 2018.

P.C.

1. With consent of parties, heard finally at the stage of admission.

The appellant herein has challenged the order dated 9th February, 2018 whereby the learned Judge of the City Civil Court, Borivali Division, Dindoshi, Mumbai had rejected the ad-interim relief.

2. The appellant claims that he is in possession of the suit premises, details of which are given in paragraph nos. 1 and 2 of the plaint. The plaintiff claims that he is carrying on the business of

selling tea, cold drink and vadapav in the suit premises and that he has been issued license under Section 394 of the MMC Act. The appellant-plaintiff also claims that the suit premises has been assessed for the purpose of tax and that he has been paying the taxes in respect of the suit premises. It is further alleged that the electric connection in respect of the suit premises is in the name of the appellant-plaintiff herein.

3. The grievance of the appellant-plaintiff is that on 2nd February, 2018 the officer of the respondent had threatened to demolish the suit premises. The appellant claims that he was not issued any notice and that he was sought to be dispossessed without following due process of law.

4. A perusal of the impugned order indicates that the learned Judge had dismissed the suit mainly on the ground that the appellant had not approached the Court with clean hands. It was held that the son of the appellant-plaintiff as well as the wife of the appellant have also filed two separate suits, and that they too have relied upon the same assessment bills. There is no finding recorded that the earlier suits are in respect of the same premises which is the subject matter

of the L.C.Suit No. 323 of 2018.

5. Considering the above facts and circumstances, and also considering that prima facie the appellant has placed on record the licence dated 12th December, 2017 by issued under Section 394 of MMC Act, as well as the assessment bill, and also considering the fact that no notice was issued to the appellant, in my considered view, ad-interim relief granted by order dated 26th February, 2018 has to be continued till the disposal of the Notice of Motion.

6. The Appeal from Order is disposed of with direction to the parties to complete their pleadings within four weeks, and with further direction to the Trial Court to dispose of the notice of motion within eight weeks.

7. It is made clear that the Notice of Motion shall be disposed of on its own merits. All points and contentions are specifically kept open.

8. In view of disposal of the Appeal from Order, Civil Application (St) No.5318 of 2018 also stands disposed of.

(ANUJA PRABHUDESSAI, J.)