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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER No. 333 OF 2018
WITH
CIVIL APPLICATION NO. 439 OF 2018

Vasant Sadashiv Chikne, through C.A.
Mr. Farooque M. Ajmeri ... Appellant
Vs.
The Assistant Municipal Commissioner,
Ward-B and Ors. ... Respondents

Mr. V. A. Thorat, Sr. Counsel a/w Sandeep S. Sharma, for the
Appellant.
Mrs. Mamta R. Bhoir, for Respondent No. 1 – MCGM.
Ms. Firdaus Moosa a/w Prakash Mahadik, for Respondent Nos. 2
and 3.

CORAM : V. M. DESHPANDE, J.

DATE : JULY 9, 2018

ORAL JUDGMENT :-

1. Heard. **Admit.** By consent of the counsel of all respective parties, appeal is taken up for final hearing, after the learned counsel waive notice of final hearing for the respective respondent.
2. Heard the learned senior counsel Mr. V. A. Thorat,

for the Appellant, the learned counsel advocate Mrs. Bhoir for Respondent No. 1 Corporation and the learned counsel Ms. Firdaus Moosa for Respondent Nos. 2 & 3.

3. The Appellant herein is challenging the order passed by the learned Judge, City Civil Court, Mumbai dated 9.2.2018 and signed on 13.2.2018, by which the court below dismissed Notice of Motion 124 of 2014 filed in L.C. Suit No. 148 of 2014, and thereby refused to grant order of injunction in favour of the Appellant.

4. The notice impugned in the suit states about removal of unauthorised construction of walls on terrace of ground + 3 floor building with cyphorex blocks and M.S. angles ladi coba used for extension of height having M. S. sheet on the top. According to the learned senior counsel, in fact, building is ground + 4 floors and for that he invited my attention to a document dated 19.10.1989, which an inspection extract in respect of the property situated at “B” Ward to show that in the said communication issued by the Corporation, there is a

reference of 4th floor. He therefore, submitted that the impugned notice is nothing but a device to evict the Appellant from the suit premises at the behest of landlords / owners.

5. Initially, the suit was filed by the Appellant only against the Assistant, Municipal Commissioner. Respondent Nos. 2 and 3 herein filed an application before the court below for joining them as party defendants, being owners of the suit property. The court below allowed the said application and Respondent Nos. 2 and 3 were joined as the defendants in the suit.

6. The plaint opens with following paragraph 1 as under:

“1. The Plaintiff is of Mumbai, Indian inhabitant, is a tenant of premises on terrace above 4th floor, situated at 14/4, Ramesh Chamber, Garibdas Street, Vadgdi, Masjid Bunder Mumbai 400 003” , which is referred as the suit premises.

7. Thus, it is crystal clear that the Appellant / plaintiff has filed the suit before the court below challenging the notice in order to protect his tenancy rights. It is also the submission of

the learned senior counsel for the Appellant before this Court that Appellant is the tenant, and in fact, Respondent Nos. 2 and 3, who are owners have found novel way to evict him from the premises by getting the notice issued against him for demolition of the structure.

8. Grant of order of temporary injunction is a discretionary relief. There cannot be a straight jacket formula as to in what situation, the injunction should be granted or injunction should be refused. Every case will have to be evaluated in given set of facts while granting or refusing the relief in the nature of temporary injunction.

9. However, it is a cardinal rule of law that the party which seeks discretionary relief must approach to the court with clean hands. It is expected from the litigant, who claims discretionary relief, to disclose every fact, touching the subject matter. The suppression of fact, that too material facts, will always disentitle the plaintiff or litigant from claiming discretionary relief from the Court. The Court should not grant

any discretionary relief whatsoever in nature, if it is found by the Court that material facts are deliberately suppressed and / or the facts are not disclosed only in order to obtain discretionary relief, because in my view, such litigant is guilty of polluting the pure stream of administration of justice.

10. In the present case, as observed in the earlier part of this judgment that plaintiff has approached to the court below by stating solemnly that he is tenant of the suit premises. The suit is filed on 10th January, 2014. Thus, according to the plaintiff, on 10th January, 2014, he was tenant of the suit premises.

11. According to the learned counsel for the Respondent Nos. 2 and 3, the plaintiff is not tenant of the suit premises, since the Appellant has already lost the character as a tenant. Before the trial court, Respondent Nos. 2 and 3 have already filed their written statement. In the written-statement, it is specifically stated by Respondent Nos. 2 and 3 that they issued notice on 23.9.2011 to the plaintiff, since the plaintiff was in

arrears of rent. The plaintiff in spite of receipt of the said notice, he did not reply the same, nor cleared the arrears of rent. Therefore, suit for eviction was filed against the Appellant / plaintiff by the defendant Nos. 2 and 3 for eviction and handing over peaceful and vacant possession of the suit premises before the Small Causes Court, Mumbai and the said suit was registered as R.A.E. & R. Suit No. 69 / 112 of 2012 and the learned Judge of the Small Causes Court decreed the said suit on 13th September, 2012 thereby granting decree of eviction of the plaintiff / Appellant from the suit premises. After passing of the said decree, the plaintiff through his power of attorney filed in MARJI Application No. 754 of 2012 for setting aside the decree of eviction under Order IX, Rule 13 of the Code of Civil Procedure, 1908. The learned Judge, on 15.3.2013 dismissed the said proceedings and thus decree of eviction stands confirmed.

12. It was always open for the Appellant / plaintiff to challenge the decree of eviction and / or order dated 15.3.2013,

rejecting his MARJI Application No. 754 of 2012. When this aspect is specifically put to the learned senior counsel by this Court, he made a statement that his instructing advocate has no clue about the same. Be that as it may, the fact remains that Appellant suffered a decree of eviction and after the said decree he has lost his status as tenant of the suit premises.

13. In spite of this particular aspect that the Appellant has lost his status / character as a tenant, which was well within his knowledge. In spite of this, the Appellant has made a solemn statement before the Court that he is a tenant of the suit property. It was the duty on the part of the Appellant to disclose these material facts in the plaint. These facts are suppressed by the plaintiff. Only when Respondent Nos. 2 and 3 filed the application on their own to join them as party-defendants and when they were permitted to do so, these facts are brought on record in their written-statement. In that view of the matter, it is crystal clear that the Appellant / plaintiff is guilty of suppressing material facts from the Court and on this count alone, he is not

entitled for getting any discretionary relief.

14. It is to be seen that the plaint is not signed by the plaintiff himself. However, the plaint statements are verified by Mr. Farooq Ajmeri, who claims to be the duly constituted attorney for the plaintiff / Appellant. Even the proceedings for setting aside the decree are also filed by the Appellant through his power of attorney. The present appeal is also filed by the Appellant through his power of attorney.

15. The power of attorney was placed on record before the court below at Sr. No. 1, alongwith list of documents (Exhibit 9). The learned Judge of the court below found that though the said power of attorney is executed before the Notary Public, the senior number at which the concerned Notary has registered the document in his register is not mentioned on the said of power of attorney.

16. Further, on merits though the permission was initially granted by the Corporation for repairs, it was informed that though permission is not required for tenantable repairs,

enumerated at Sr. Nos. 1 and 7 in letter dated 25.11.2013, the said letter gives instructions that there should not be any vertical or horizontal extension and addition, alteration to the existing structure. Copy of the inspection report of the officer of the Corporation, prima-facie shows that the Appellant has carried on unauthorised construction beyond tenantable repairs. That in my view was correctly considered by the trial court. The cumulative effect of all these things, in my view, shows that Appellant is not entitled to any relief from the Court. Consequently, the appeal is dismissed. However, there shall be no order as to costs.

17. At this stage, the learned senior counsel submits that interim order in operation since 2014 be continued for further four weeks. The said request is opposed by the learned counsel for Respondent Nos. 2 and 3, but looking to the fact that interim order is operating in favour of the Appellant since 2014, in my view, the request made by the learned senior counsel for the Appellant is just and can be granted. Accordingly, ad-interim

order operating in favour of the Appellant shall remain in operation for next four weeks from today. After expiry of four weeks, said ad-interim order shall cease to exist automatically.

18. Needless to mention that all pending civil applications filed in this appeal shall also stand dismissed.

Sd/-
[V. M. DESHPANDE, J.]

Vinayak Halemath