

Sarnobat

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

**APPEAL FROM ORDER NO. 209 OF 2018
ALONGWITH
CIVIL APPLICATION NO. 273 OF 2018**

Mr. Sadik Ali Asgar Ali. ... Appellant.
Vs.
Municipal Corporation of Greater Mumbai
& Anr. ... Respondents.

Mr. Muhammed I. Ali, for the Appellant.
Mrs. M. R. Bhoir, for the Respondent No.1/MCGM.

CORAM : V. M. DESHPANDE, J.

DATE : 5th JULY, 2018.

P. C. :

Not on board. Taken on board.

1. Cause for approaching the appellant before this Court is the order passed by learned Judge of City Civil Court dated 9th March, 2018 in L. C. Suit No. 644 of 2018. The operative portion of the stay order reads as under ;

“ 1) Ad-interim relief is hereby refused.

2) Draft Notice of Motion be registered.”

The above order therefore, shows that prayer for ad-interim relief of the appellant is refused pending the Notice of Motion.

2. After the order dated 9th March, 2018 it appears that the Court below itself has passed order directing the Corporation not to

take coercive steps in respect of the suit property for two weeks. It can be seen from the order which is at page 10 of the compilation of this appeal.

3. On 21st March, 2018 the matter was taken up for consideration before this Court. While considering the case of the appellant, this Court (Coram : Smt. Anuja Prabhudessai, J.) has observed that, to the notice the appellant has filed the reply. The endorsement on the reply reveals that the reply was filed by the Corporation on 20th February, 2018. Further observation was made by this Court that the record prima facie indicate that the order was passed without considering the reply filed by the appellant.

4. The order passed by the designated officer is available at page 109 of the compilation of this appeal. It shows that the designated officer has observed that the reply is not filed by the appellant. However, the reply filed on behalf of the appellant before the designated officer is also available at compilation page 62. It is dated 17th February, 2018. At left hand column on the upper side there is a clear endorsement from the office of the Corporation. Therefore, the observation made by this Court on 21st March, 2018 is substantiate.

5. Since the Notice of Motion is still pending and when the reply was not considered, in my view the appellant has made out a case for grant of interim order. That leads me to pass following order;

ORDER

I) The Appeal is allowed.

II) The order passed by learned Judge, City Civil Court dated 9th March, 2018 is hereby set aside.

III) The parties are directed to appear before the learned Judge on 20th July, 2018 as a date which is fixed by the learned Judge of the Court below. The learned Judge of the Court below shall decide the Notice of Motion within a period of four weeks.

IV) Till the Notice of Motion is decided, the Corporation shall not take any coercive steps in pursuance to the notice and the order passed by the designated officer which is impugned in the Suit.

V) With this the appeal is allowed and disposed of.
All Civil applications are also disposed of.

[V. M. DESHPANDE,J.]