

Sarnobat

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (STAMP) NO.9414 OF 2018
ALONGWITH
CIVIL APPLICATION (STAMP) NO.9415 of 2018

Mr.Manish Talekar ..Appellant
Vs.
Municipal Corporation of Greater Mumbai ..Respondent.

Mr.Meelan Desai I/by Mr.T.R. Patel for the Appellant.
Mrs.Madhuri More for the respondent/MCGM.

CORAM : V.M. DESHPANDE, J.

DATE : 19th JUNE, 2018.

ORAL JUDGMENT :

1. Heard Smt. Desai, learned counsel for the appellant and Mrs. More, learned counsel for respondent-Corporation. Also perused the impugned order and the other relevant documents.
2. With the consent of the learned counsel for the appellant and the learned counsel appearing for the respondent-Corporation, the Appeal is **Admitted** and is taken up for final hearing forthwith.
3. The cause arose for the plaintiff/appellant to approach this Court in this appeal since pending is injunction application the ad-interim relief is refused by the learned Trial Court.
5. The learned counsel for the appellant invited my attention

to page 132 and 133 which are the notices issued by the Corporation. Perusal of the said notices would show that the officers of Corporation was to visit the suit site and inspect the factual position. According to the plaintiff though, as per the notice dated 16th November, 2017 the officers were expected to inspect the suit site, they failed to do so and instead on 20th November, 2017 they issued a notice for demolition alleged to have been unauthorized structure. That gave rise to the filing of L.C. Suit No. 572 of 2018. The application for injunction is also moved.

6. Smt. More learned counsel for Corporation has submitted that till today no reply is filed to the application for injunction before the learned Trial Court and it is also an admitted position that the said application is still await its hearing and consideration by the learned Judge of the Trial Court.

7. In my view it would be in the interest of justice that the Trial Court shall decide the main injunction application on its own merit after filing the reply on behalf of the Corporation. This required in my view because if anything is observed while deciding the present appeal on its own merit, it may cause prejudice to both parties since, the main application for injunction is still pending before the learned Trial Court. It is also clear that the notice is not for removal of any dilapidated structure. Hence, the following order;

ORDER

- i) The Municipal Corporation shall file its reply in L.C. Suit No.572 of 2018 contesting the application for injunction if they choose within a period of Four weeks from today.
- ii) Smt. More learned counsel for Municipal Corporation states that, she would definitely file reply before the learned Trial Court. After the reply is filed by Municipal Corporation, one week time is granted to the appellant to file the rejoinder, if they desire.
- lii) After the pleadings are completed, from the said date within a period of Four weeks the learned Judge shall decide the application on its own merit.
- iv) Till the main notice of motion is decided on its own merit by the learned Trial Court, the Municipal Corporation shall not take any coercive steps in respect of disputed structure.
- v) The appellant is also directed to maintain status-quo as on the day when the notice of removal of alleged encroachment was served.
- vi) With this appeal is finally disposed of with no order as to costs.

(8) AOST-9414-18

Vii) No orders are necessary on pending Civil Applications since, main appeal is disposed of. Accordingly, all Civil Applications are disposed of.

[V.M. DESHPANDE, J.]