

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

**APPEAL FROM ORDER (ST.) NO. 10190 OF 2018
WITH
CIVIL APPLICATION (ST.) NO. 10191 OF 2018
IN
APPEAL FROM ORDER (ST.) NO. 10190 OF 2018**

Bikram Mohansingh ButolaAppellant
V/s.
Municipal Corporation of Greater Mumbai & Anr.Respondents

Mr. R.A. Thorat i/b. Mr. Pradeep J. Thorat for the appellant.
Mrs. Madhuri More for respondent no.1/MCGM.

**CORAM: SMT. ANUJA PRABHUDESSAI, J.
DATED: 11th APRIL, 2018.**

P.C.:

By consent, the appeal is heard finally at the stage of admission.

2. The appellant herein has challenged the order dated 31st March, 2018 whereby the learned Ad-hoc Judge, City Civil Court, Mumbai has refused to grant ad-interim relief in Notice of Motion filed in L.C. Suit No. 871 of 2018. In the said notice of motion, the appellant herein had sought to restrain the Respondent-Corporation from demolishing the suit premises i.e. the Mezzanine floor of Shop No.10 and 10A, on ground floor of Vijay Chambers, Grant Road (East), Mumbai.

3. Mr. R.A. Thorat, the learned counsel for the appellant contends

that the *ad-interim* relief needs to be granted as to preserve the subject matter of the suit till the notice of motion is decided. Whereas, Mrs. More, learned counsel for the Respondent-MCGM contends that the stop-work notice under Section 354A of the Mumbai Municipal Corporation Act, 1888 was issued to the Appellant-Plaintiff in the year 2011. She has stated that the Appellant-Plaintiff had challenged the said notice in L.C. Suit No.2276 of 2011, which came to be dismissed for default on 16.01.2016. The Appellant-Plaintiff did not file any restoration application. Hence, the suit structure was partly demolished on 18.02.2016. The Appellant-Plaintiff had issued a letter stating that there were electricity wires below the premises and demolition of the suit structure could lead to short circuit. She further stated that the Appellant had stated that he would himself demolish the premises within two days. Since the Appellant failed to demolish the suit structure, the Corporation demolished the entire structure on 23.02.2018.

4. I have perused the records and considered the submissions advanced by the learned counsel for the Appellant-Plaintiff and Respondent-Corporation.

5. The dispute is in respect of Mezzanine floor of Shop No.10 and 10A located on ground floor of Vijay Chambers, Grant Road (East), Mumbai. It is not in dispute that the Respondent-Corporation had issued a stop-work notice to the Appellant-Plaintiff on 15.09.2011 contending that the Appellant-Plaintiff had carried out “construction- I Section Ladi, Koba, without approval of the MCGM”. The Appellant-Plaintiff had challenged the said notice in L.C. Suit No.2276 of 2001. By order dated 12.9.2014, passed in the said suit, the Respondent -Corporation were restrained from demolishing the said structure pending disposal of the suit. The records reveal that said suit was dismissed for default on 16.01.2016. The Appellant-Plaintiff did not seek restoration of the said suit.

6. After the dismissal of the said suit, the Corporation sought to demolish the suit structure, which was the subject matter of notice under Section 354 A of the MMC Act, 1888. The records *prima facie* reveal that the Appellant-Plaintiff has filed second Suit No.861 of 2018 to restrain the Corporation from demolishing Mezzanine floor of Shop No.10 and 10A located on ground floor of Vijay Chambers, Grant Road (East), Mumbai, on the ground that such action suffers from jurisdictional error and is nullity, bad in law, illegal and void. *Prima*

facie, it appears that the second suit which is in respect of the same subject matter is filed on the same cause of action as in the earlier suit. Suffice to say that Order IX Rule 9 precludes bringing a fresh suit in respect of the same cause of action where the suit is wholly or partly dismissed under Rule 8 of the Code of Civil Procedure.

7. Be that as it may, the learned counsel for the Corporation has placed on record letter dated 18.02.2016. A perusal of the letter indicates that the appellant had obstructed demolition of the ground that there were electricity wires beneath the structure and the demolition would lead to short circuit. The letter further reveals that the appellant had undertaken to demolish the remaining portion within two days. Mrs. Madhuri More, learned counsel for the respondent has stated that since the appellant had not demolished the suit structure within a period of two days as undertaken, the Corporation has demolished the same. She has placed on record photographs, which *prima facie* indicate that the suit structure has already been demolished.

8. Considering the above facts and circumstances, the learned Judge was perfectly justified in rejecting grant of ad-interim relief. The

Appeal, therefore, has no merits and is accordingly dismissed. Civil Application is dismissed in view of dismissal of the appeal.

(SMT. ANUJA PRABHUDESSAI, J.)