

Sarnobat

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

**APPEAL FROM ORDER NO. 496 OF 2017
ALONGWITH
CIVIL APPLICATION NO. 634 OF 2017**

Smt. Asha Bhupendra Kansara. ...Appellant.
Vs.
Municipal Corporation of Greater Mumbai
& Ors. ...Respondents

**ALONGWITH
APPEAL FROM ORDER NO. 497 OF 2017
ALONGWITH
CIVIL APPLICATION NO. 635 OF 2017**

Smt. Geeta Suresh Joshi. ... Appellant
Vs.
Municipal Corporation of Greater Mumbai
& Ors. ... Respondents

Mr. A. Y. Sakhare, Sr. Counsel a/w Joel Carlos I/by Sushmitha Sherigar,
for the Appellant.
Mr. Atul Damle Sr. Advocate a/w Mr. Durgesh Kulkarni, for the
Respondent No. 3 and 4.

CORAM : V. M. DESHPANDE, J.

DATE : 17th JULY, 2018.

P. C. :

1. Heard Shri Sakhare learned Senior advocate for the appellant in these two appeals. Also heard Shri Damle, learned Senior advocate for respondent Nos. 3 and 4, also heard Smt. More the learned counsel for the Corporation.

2. In both these appeals notice was issued by the Corporation authority against the appellant under Section 351 of the MMC Act . It is dated 31st November, 2016. The appellant approached to the Court by filing two different Suits, AO No. 496 of 2017 pertains to L.C. Suit No. 891 of 2017 whereas the AO No. 497 of 2017 pertains to L.C. Suit No. 892 of 2017. These Suits are for declaration and for perpetual injunction. Pending suits two different Notices of Motion were filed in these two suits. In the pending application for temporary injunction on 22nd March, 2017 the learned Judge of the Court below refused to grant ad-interim relief. Though the ad-interim relief was refused by the learned Judge of the Court below, the Court below itself has granted two weeks time thereby directing to parties to maintain status-quo. During this protected period the appellants approached to this Court by filing both these two appeals and this Court granted ad-interim order in their favour on 18th April, 2017 and the said interim order is still in operation. Thus the structure of both these appeals are protected by interim order.

3. Though the learned Senior advocate Shri Damle tried to canvas before this Court as to how the refusal of interim order is justified in my view any observations made in that behalf from this Court will cause serious prejudice to the parties in as much as, the Notice of Motion namely the application for grant of temporary

injunction still pending before the Court below. Further it is not the case of any of the parties, or even the Corporation that the Suit structures in question are dilapidated one and looking to the fact that the interim orders are operating in favour of the appellant from 22nd March, 2017, in my view no prejudice will be caused to any of the respondents. Hence, following order is passed;

ORDER

- I) The appeals No. 496 of 2017 and 497 of 2017 are hereby disposed of without disturbing the order impugned in the respective appeals.
- II) The Notice of Motion pending in L.C. Suit No. 891 of 2017 and 892 of 2017 shall be disposed of by the Court below on its own merit by giving opportunity of hearing to all the parties to the Notices of Motion within a period of 12 weeks from the date of the receipt of this order.
- III) It is made clear that the learned Judge of the Court below shall not get himself influenced by his own observations while refusing the ad-interim relief while deciding the application for temporary injunction.
- IV) Till the Notices of Motion are disposed of by the

Court below, the ad-interim relief operating in favour of the appellants from 22nd March, 2017 to remain in operation. It is also expected from the parties to the Suit and the Applications that they will not indulge any dilatory tactics for extending the date for hearing.

V) With this the appeals are disposed of. All Civil Applications are also disposed of.

[V. M. DESHPANDE, J.]