

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL No. 2529 OF 2011

Kalpana Chetan Nisar ... Appellant
Vs.
The Municipal Corporation of Greater Mumbai ... Respondent

Mr. Ashutosh O. Shukla, Advocate for the appellant.
Mrs. M.R. Bhoir, Advocate for the respondent/Corporation.

CORAM: MRS.MRIDULA BHATKAR, J.
DATE:14th February, 2018.

P.C.:

Admit. By consent, the Appeal is heard finally and decided at the stage of admission.

2. The appellant/plaintiff has filed the suit for injunction against the respondent/Corporation that they should not demolish or pull down the suit building, which is ground plus 2 storied structure on the portion of plot admeasuring 814.46 sq.mtrs. CTS No. 1406-A/25/7, Chincholi Bunder Road, Off Malad Link Road, Village Malad without following due process of law.

3. Heard the submissions of the learned counsel for the appellant and the learned counsel for the Corporation. Perused the judgment and record. The trial Court has framed issue No. 1, i.e., whether the

plaintiff proves that the defendant intends to demolish the suit structure without following due process of law and the answer is “No”.

4. The learned counsel for the Corporation, on query, has submitted that the demolition has taken place in respect of structures adjoining the suit structure and not against the suit structure. Today also the Corporation has not issued any notice in respect of the suit structure.

5. Thus, the suit is filed on apprehension. The suit structure exists. The suit is rightly dismissed by the judgment and order dated 6th January, 2011 passed by the learned Judge of the City Civil Court, Dindoshi, Mumbai. Hence, the First Appeal is dismissed with following modification -

“If the Corporation intends to demolish the suit structure, it will follow the due process of law.”

(MRIDULA BHATKAR, J.)