

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

**APPEAL FROM ORDER NO.510 OF 2017
WITH
CIVIL APPLICATION NO.655 OF 2017**

Ramashray Bhagwat Dhobi @ Rajak @ Kanojia ..Appellant

vs.

M/s. Tridev Shreeji Associates Thr. Partners ...Respondents

Mr. K.D. Jha for the Appellant .

Mr. Dishang Shah i/b Mr. Piyush M. Shah for the Respondent No.1.

Ms.Madhuri More for the Respondent No.2/MCGM.

CORAM : V. M. DESHPANDE, J.

DATE : 2nd JULY, 2018

P.C.:

. Heard Mr. Jha, learned counsel for the appellant. In the present appeal appellant has challenged the order passed by Ad-hoc Judge, City Civil Court, Gr. Bombay dated 19/5/2017 in L.C. Suit No.1109/2017 by which the learned Judge of the Court below has refused to grant ad-interim relief. The learned counsel for the appellant has invited my attention to various statement of facts which the plaintiff has asserted in the plaint and also took me through various documents. The suit was filed with following prayers:

- a) That this Hon'ble Court may be pleased to declare that the Defendant No.1 and/or its partners, their employees, agents, servants, contractors including the driver playing bulldozer on 25/4/2017 and/or any person claiming through them were and are not legally entitled to demolish the Plaintiff's existing suit shop cum residential premises being shop No.3, Datta Niwas, M. G. Road, Near Ambaji Dham, Mulund (W), Mumbai 400 080, thereby forcibly dispossessing the Plaintiff from the suit premises, resulting into heavy loss and damages recoverable from Defendant No.1 and its allies.

b) That this Hon'ble Court may be pleased to pass a permanent order and injunction restraining the Defendant No.2, more particularly E.E. B.P. Department of Defendant No.2 from sanctioning any plan or proposal filed by Architect of the Defendant No.1 in respect of the subject property covering Mochi Building and Datta Niwas building situated at M.G. Road, Near Ambaji Dham, Mulund (W), Mumbai -400 080 and that Defendant No.1 may also be permanently restrained from carrying on any construction and/or redevelopment at the aforesaid plot of land/property covering Mochi Building and Datta Niwas as aforesaid and also the plot of land on which suit shop premises being Shop No.3, Datta Niwas, M.G. Road, Near Ambaji Dham, Mulund (W), Mumbai 400 080 has been existing till 25/4/2017 i.e. prior to its forcible demolition by Defendant No.1.

c) That this Hon'ble Court may be pleased to pass a permanent order and injunction restraining the Defendant No.1 or any of its partners from encumbering, parting with and/or creating any third party rights in respect of aforesaid suit shop premises and also the plot of land on which suit shop premises being Shop No.3, Datta Niwas, M.G. Road, Near Ambaji Dham, Mulund (W), Mumbai 400 080 has been existing till 25/4/2017 i.e. prior to its forcible demolition by Defendant No.1.

d) That the Hon'ble Court may further be pleased to pass an order and direction against the defendants, more particularly concern E.E. B.P. Department of Defendant No.2, not to consider and/or pass any proposal if filed and pending before the concern E.E.B.P. Department of Defendant No.2 and also not to grant Commencement Certificate, and/or any Occupation Certificate including water connection for construction and also for the proposed new building without resolving the dispute and claim of the Plaintiff in writing in respect of his shop cum residential premises being Shop No.3, Datta Niwas, M.G. Road, Near Ambaji Dham, Mulund (W), Mumbai 400 080.

e) That this Hon'ble Court may be pleased to appoint Court Receiver, High Court Bombay under O-40, R-1 of CPC, as it is just and convenient that Court Receiver, High Court Bombay deserves to be appointed in respect of the plot of land bearing C.T. S. No.927 (Part) of Village-Mulund, Taluka-Kurla, Dist: M.S. D. admeasuring 12.64 sq. mtr. in as is where is condition till the hearing and final disposal of the suit, with all such rights, to take physical possession of the said land forthwith, and the

Plaintiff be appointed as the agent of the Court Receiver on such terms and conditions as this Hon'ble Court may deem fit and proper as prescribed under the law.

f) that this Hon'ble Court by using its inherent powers as prescribed under S.151 of CPC, may be pleased to pass an order directing the Defendants to restore the Plaintiff's suit premises admeasuring about 6' x 22' along with portion of bathroom admeasuring about 2' x 2' situated on rear portion and also W.C. block of the suit premises, along with rolling shutter as an opening main door and wooden door on the rear side wall of the suit premises leading to the bathroom and W.C. block in its original shape along with all amenities and facilities including electricity connection with electric wiring etc. forthwith.

In Alternate

g) The Plaintiff may be allowed, ordered and directed to reconstruct his suit shop cum residential premises being Shop No.3, Datta Niwas, M.G. Road, Near Ambaji Dham, Mulund(W), Mumbai- 400 080 in its original shape at his own cost without obtaining any permission from the MCGM, since the same has been high-handedly removed by the builders and its re-erection shall not amount to any unauthorized erections with liberty to recover the entire amount of reconstruction and restoration of status-quo ante in its original shape prior to its high handed demolition on 25/4/2017 by the builders and that builders/developers may further be ordered and directed to deposit entire reconstruction cost of the suit shop premises.

h) that interim and ad-interim relief in terms of prayer (a) to (f) be granted.

i) Costs of the suit be provided for.

j) For such other and further reliefs as the nature and circumstances of the case may required be granted.

2. During the pendency of the suit, pending notice of motion for ad-interim relief was preferred. The parties were heard for ad-interim relief. There is no dispute that prior to passing of the order the suit structure in question was demolished. According to the learned counsel for the appellant it was pulled down high-handedly and for that he invited my

attention to the various photographs which were filed on record.

3. Thus, it is crystal clear that on the day when the impugned order was passed the structure was not standing on. The another prayer that was submitted was that the Corporation should be restrained from sanctioning the plan, sanction or not to sanction is a statutory duty of the Corporation. The statutory function cannot be prohibited, if the statutory body has discharged its functions within the four corners of law. According to learned counsel for the appellant his other prayer which he has submitted before this Court is that there should be reconstruction of the suit premises. In my view such prayer cannot be made before this Court and the remedy of appellant lies somewhere else. Since at the time of impugned order the structure was already demolished, the question of high-handedness will be decided by the Court below at the appropriate stage when the parties will adduce their respective evidence.

4. From the impugned order it is crystal clear that the plan is also sanctioned. In that view of the matter, I find no reason to interfere with the impugned order. Appeal fails and it is dismissed.

5. Since the appellant has very seriously disputed the demolition, the Trial Court to decide the suit on its own merits and as expeditiously as possible and not later than 1 ½ year from the date of receipt of this order. No costs. All Civil Applications are disposed of.

(V. M. DESHPANDE, J)