

Sarnobat

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

**APPEAL FROM ORDER (STAMP) NO. 16515 OF 2018
ALONG WITH
CIVIL APPLICATION (STAMP) NO. 16516 OF 2018**

Mr. Javed Iqbal Barwani. ... Appellant
Vs.
The Municipal Corporation of Greater Mumbai. ... Respondent.

Mr. Pradeep J. Thorat, for the Appellant.
Mrs. Madhuri More, for the Respondent /BMCGM.

CORAM : V. M. DESHPANDE, J.

DATE : 19th JUNE, 2018.

ORAL JUDGMENT :

1. Looking to the controversy involved in this Appeal this Court is of the view that instead keeping the appeal alive for years together, the said can be disposed of at this stage by passing the appropriate order.
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. I have heard Shri Pradip Thorat the learned counsel for the appellant and Smt. More the learned counsel for Bombay Municipal Corporation. Also perused the impugned order and the other relevant

documents which were brought to my notice by tendering them across the bar.

4. The reason for the appellant approaching to this Court is refusal of ad-interim injunction by the learned Judge of the City Civil Court on 7th June, 2018.

5. The appellant is the original plaintiff. He filed Long Cause Suit (herein after referred to as “ L.C.Suit ” for the sake of brevity). The said is registered as L.C.Suit No.1521 of 2018. By the said suit a declaration is sought to the effect that notice dated 11th April, 2018 and the order passed by the designated officer on 31st May, 2018 which was received by the appellant/plaintiff on 1st June, 2018 is illegal, improper, malafide, bad-in-law and unenforcible against the plaintiff.

6. Along with the suit appellant/plaintiff took a notice of motion for grant of interim relief in the nature of injunction. The learned Judge of the Court below after hearing the learned counsel for the plaintiff as well as the defendant/Bombay Municipal Corporation (herein after referred to as “B.M.C.” for the sake of gravity) refused to grant ad-interim injunction.

7. The learned counsel before me urged that the notice in question itself is erroneous. He submitted that the notice is under Section 354-A and not under Section 351 of B.M.C. Act. He submitted that for the purposes of issuance of notice under Section 354-A it is

incumbent on the part of the Corporation to point out ongoing construction. It is his submission before this Court that in fact there is no construction at all as mentioned in the impugned notice. He submitted that he is making a responsible statement before this Court that there is no construction whatsoever in nature above the first floor and therefore, the notice itself was bad-in-law.

8. Be that as it may. It is found by this Court that before the learned Judge of the Court below, the Bombay Municipal Corporation has not filed any reply. In my view, instead of deciding the appeal on its own merits it would be in the interest of justice to direct both the parties to maintain status-quo and direct the Trial Court to decide the application for injunction. This required in my view because if anything is observed while deciding the present appeal on its own merits, it may cause prejudice to both parties since the main application for temporary injunction is still pending before the learned Trial Court.

9. It is to be seen that it is not the case of the Corporation that the structure in question is in dilapidated condition and if it is not removed as early as possible, it will cause the damage and injury to both property and the health.

10. Since the counsel for the appellant is making a specific statement before this Court that there exists no construction above the first floor as observed in the impugned notice and it is his further

statement that the appellant will not raise construction whatsoever in nature during the pendency of the suit itself, I pass the following order;

ORDER

- i) The effect and operation of the impugned notice is kept in abeyance till the decision of the notice of motion for temporary injunction in L.C. Suit No. 1521 of 2018.
- ii) The Corporation shall file its reply to the notice of motion before learned Judge of the Court below within a period of Three weeks from today as prayed by the learned counsel for Corporation.
- lii) After the receipt of the reply from the Corporation, the plaintiff shall file rejoinder if any within a period of Two weeks and shall not obtain any further date nor the Court shall grant any further date for the said purpose.
- iv) After the pleadings are completed learned Judge of the Court below shall decide the notice of motion on its own merit after hearing parties within a period of Three weeks thereafter.
- v) With this observation the appeal is disposed of with no order as to costs.

- vi) All the Civil Applications are disposed of.
- vii) Parties shall act on authenticated copy of this order.

[V. M. DESHPANDE,J.]