

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 1055 OF 2015
WITH
CIVIL APPLICATION NO. 1296 OF 2015
IN
APPEAL FROM ORDER NO. 1055 OF 2015

Mohd. Fasieh Haji Mohd. Quddus Khan

.. Appellant.

Vs.

Municipal Corporation of Greater
Mumbai & Anr.

.. Respondents.

Mr. Anand Pande, for the Appellant.

Mrs. Madhuri More, for BMC.

CORAM : M.S. SONAK, J.

DATE : 13th August 2018.

P.C. :-

- 1) Heard the learned Counsel for the parties.
- 2) The challenge in this appeal is to the order dated 20th July, 2015 by which the learned Trial Court declined the relief of ad-interim protection to the appellant.
- 3) There is no dispute that this Court directed the parties to maintain status-quo in the present appeal and accordingly status-quo is continued till date. The notice of motion is to come up for hearing on 19th September, 2018. Possibly, a long date has been given in view of the status-quo order granted by this Court. However, considering the fact that the suit is of the year 2015, there is no justification for not

disposing of the notice of motion expeditiously.

4) Mrs. Madhuri More, learned counsel for the respondent No.1-MCGM points out that notice under section 354 (A) of Mumbai Municipal Corporation Act, 1888 was issued by the MCGM at the stage when the unauthorized construction was in progress. She submits that the appellant taking advantage of the ad-interim orders have proceeded to complete the construction.

5) The aforesaid contention of Mrs More is disputed by Mr. Pande, learned counsel for the appellant.

6) There is no dispute that the learned Trial Judge will take into consideration the contentions of either parties including, contentions in the context of the submissions now made by Mrs More and refuted by Mr. Pande. However, the interest of justice will be met if the status-quo order is continued until the disposal of the notice of motion taken out by the appellant before the learned Trial Court. No doubt, hearing of the notice of motion will have to be pre-poned and suitable directions will also have to be issued to the learned Trial Court for expeditious disposal of the notice of motion.

7) Accordingly, this appeal is disposed of with the following order :-

(a) The learned Trial Judge is directed to pre-pone the hearing in the notice of motion taken out in Long Cause Suit No. 1569 of 2015 and further to dispose of the same within a period of six weeks from the date of production of an authenticated copy of this order;

(b) All the parties, including in particular the appellant, to cooperate in the matter of expeditious disposal of the notice of motion. If at any stage, the learned Trial Court finds that the Appellant is unnecessarily delaying the disposal of the notice of motion, the learned Trial Judge will be at liberty to make such orders as may be necessary including the orders for vacation of the status-quo which is now to continue until the disposal of the notice of motion;

(c) The status-quo order granted by this Court to continue till the disposal of the notice of motion;

(d) The Trial Court, in disposing of the Notice of Motion need not be influenced by any observations made by it in the order which is impugned in this appeal or for that matter any observations in the present appeal;

(e) All contentions of all the parties are kept open and it is expected that the learned Trial Judge takes such contentions into consideration while disposing of the notice of motion on its merits and in accordance with law;

(f) The parties to appear before the learned Trial Judge on 20th August, 2018 at 2:45 p.m. and

produce an authenticated copy of this order. There shall be no order as to costs.

8) All concerned to act on the basis of an authenticated copy of this order.

9) Pending Civil Application does not survive and the same is disposed of.

(M.S. SONAK, J.)