

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER NO. 792 OF 2014
WITH
CIVIL APPLICATION NO. 957 OF 2014 IN A.O. NO. 792/2014
WITH
APPEAL FROM ORDER NO. 793 OF 2014
WITH
CIVIL APPLICATION NO. 958 OF 2014**

Atul Mohan Malhotra & Anr.	... Appellants/Applicants
Vs.	
The Municipal Corporation of Greater Mumbai & Anr.	... Respondents

Mr. Vijay B. Dhingreja, Advocate for the appellants/applicants.
Mrs. Madhuri More, Advocate for respondent no. 1/Corporation.
Mr. Vaibhav Mehta i/b. Vaibhav Mehta & Associates, Advocate for
respondent no. 2.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **23rd January, 2018.**

P.C.:

Admit. By consent, the Appeals are heard finally and decided
at the stage of admission.

2. These Appeals from Order are directed against the order dated
18th June, 2014 passed by the learned Judge of the City Civil Court,
Borivli thereby dismissing the Notice of Motion No. 1318 of 2011 in
Suit No. 955 of 2011 and Notice of Motion No. 1988 of 2012 in Suit
No. 1834 of 2012, wherein the appellants/plaintiffs are challenging
the notice issued by the Corporation has issued notice under section
488 of the Mumbai Municipal Corporation Act dated 30th April, 2011
and also notice under section 351 of Mumbai Municipal Corporation

Act dated 28th September, 2011 and order of the Designated Officer dated 3rd August, 2012. The Corporation has earlier given notice under section 354A dated 2nd December, 2009 in respect of suit structure. The appellant is the owner of the terrace Flat Nos. 401 and 402. The appellant unauthorizedly constructed the structure on open terrace adjacent to Flat Nos. 401 and 402 with G.I. Sheets and Mangalore tiles roof and fixed the sliding windows substituting the walls and covered the entire area. Before the trial Court, the Corporation has taken stand that the said structure was demolished on 26th February, 2010, 19th March, 2010 and 5th April, 2010 and despite repeated demolition of the notice structure, the plaintiffs have re-erected the same, therefore, the trial Court observed that the plaintiffs have not approached the Court with clean hands but has tried to seek the protection for the unauthorized structure by re-erecting after demolition and has dismissed the Notice of Motions. Hence, these Appeals.

3. The learned counsel for the appellants has submitted that in between the appellants have made an application for regularization. In the order dated 30th March, 2016 this Court gave time to the Corporation to seek instructions and thereafter, the matter was adjourned from time to time. It was initially submitted that the

Corporation did not decide the Application for regularization, however, further submissions were made that as the Corporation has produced the letter of rejection, the appellants have produced NOC of Maharashtra Coastal Zone Management Authority and only NOC of the Society and copy of the resolution passed by the General Body of the Society is not produced. The learned counsel has submitted that the appellants have complied with most of the requirements as mentioned in the letter dated 4th April, 2016 and so also the letter dated 25th September, 2016. He further submitted that the appellants be given a chance to comply with these requirements and the matter be adjourned.

4. The learned counsel for the Corporation, as directed by this Court, has filed affidavit dated 23rd January, 2018 of Kiran Damodar Bari, Assistant Engineer (Building Proposal) K/West Ward. The learned counsel for the Corporation has relied on the letter dated 25th September, 2016 and pointed out that the appellants have not complied with nearly 7 requirements. She has submitted that the proposal for regularization have been rejected by the Corporation for compliance of the terms and conditions.

5. The learned counsel for the respondent no. 2/Society has

submitted that the appellants have in fact constructed on the parapet wall of the terrace and increased the height of the parapet wall and fixed sliding windows and has consumed more space. He submitted that the Society has not given NOC to this construction. He further submitted that the suit building is of 40 years old and will not be able to take this additional load of the structure, which is weighing about 1500 kg.

6. Perused the impugned order, affidavit, letter of rejection dated 4th April, 2016 and 25th September, 2016. It is admitted fact that the appellants did not obtain any permission of the Corporation so also approval of the Society before erecting this construction, which is unauthorized. The appellants were given an opportunity to get the structure regularized by this Court by order dated 30th March, 2016, however, it was not done. In the affidavit of the Corporation, the Corporation has not mentioned that they are going to regularize the structure. Moreover, the observations made by the trial Court are very pertinent on the point of conduct of the appellants. The powers of granting injunction under Order 39 Rule 2 are discretionary where the conduct is also taken into account. I do not find any ground to interfere with the order passed by the trial Court. Hence, Appeals

from Order are dismissed.

7. In view of dismissal of Appeals from Order, Civil Applications are also accordingly disposed of.

(MRIDULA BHATKAR, J.)