

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1331 OF 2016
ALONG WITH
CIVIL APPLICATION NO.3734 OF 2016

Varsha Krishnakant Dhruv Appellant-Applicant
V/s.
Municipal Corporation of Greater Mumbai Respondent

Mr. Sandeep A. Bhagwat for the Appellant-Applicant.

Mr. Prashant Sutar for the Respondent-MCGM.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 19TH SEPTEMBER, 2018.

P.C. :

1. Heard Mr. Bhagwat, learned counsel for the Appellant, and Mr. Sutar, learned counsel for the Respondent-Municipal Corporation.

2. This First Appeal is directed against the 'Judgment and Order' dated 23rd June 2016 passed by the City Civil Court, Dindoshi, Mumbai in L.C. Suit No.1034 of 2011.

3. The said Suit was filed by the present Appellant for a declaration that, the notice dated 21st March 2011 and the order dated 9th May 2011 passed by the Respondent-Municipal Corporation, under Section 55 of the Maharashtra Regional and Town Planning Act, 1966, are illegal, bad in law and not binding upon her and, therefore, the Respondent-

Municipal Corporation be restrained from demolishing the suit structure in pursuance of the said notice and order.

4. The impugned notice was issued under Section 55 of the Maharashtra Regional and Town Planning Act, 1966, calling upon the Appellant that the structure, which was made of M.S. Pipe Frame, A.C. Sheet Roof and Wooden Plywood in the terrace of the flat being illegal and unauthorized, it should be removed forthwith. The contention of the Appellant is that, the suit structure was in existence, when she has purchased the suit flat and it is found reflected in the 'Agreement'. Therefore, it cannot be called as an illegal and unauthorized structure.

5. The Trial Court, however, found from the perusal of the 'Agreement of Sale' and also from the evidence produced on record by the Appellant that, there was no permission obtained for such construction and the 'Sanctioned Plan' of the building does not show, prima facie, the existence of the said structure. In view thereof, the Trial Court has dismissed the Suit.

6. While challenging this 'Judgment and Order' of the Trial Court, the submission of learned counsel for the Appellant is that, the Respondent-Municipal Corporation has not even filed written statement, nor produced any document, controverting the documents produced by the

Appellant and, therefore, the Trial Court should have granted the relief of declaration and injunction, as claimed by the Appellant.

7. Reliance is also placed on the 'Agreement of Sale', under which the Appellant has purchased the suit flat and it is submitted that, the description of the flat shows that it was along with the attached terrace and all fixtures and fittings in the present condition and, therefore, it is submitted that, the suit structure can safely be said to be in existence since prior to the Appellant purchased the said flat in the year 1991. According to learned counsel for the Appellant, therefore, suit structure needs to be protected.

8. However, as rightly submitted by learned counsel for the Respondent-Municipal Corporation, the 'Agreement of Sale' does not show the existence of the structure, as mentioned in the notice. It merely says '*along with the terrace*', but it does not specifically describe the structure, which is impugned in the notice. Secondly, the Appellant herself has admitted in her cross-examination that, in the 'Sanctioned Plan', suit structure is not shown and she is also not having the 'Sanctioned Plan', proving the existence of such structure.

9. In that view of the matter, the Trial Court has rightly held that, whether the Respondent-Municipal Corporation files written statement

or not, the burden was upon the Appellant to produce the copy of the 'Sanctioned Plan', which she could have obtained from the Builder or its certified copy from the Municipal Authorities to prove the existence of the suit structure. She has not done so and, therefore, whether the Respondent-Municipal Corporation has filed written statement or not, as the burden was upon the Appellant to prove the legality and validity of the structure impugned in the notice and which she has failed to prove, the Trial Court has rightly dismissed the Suit. In Appeal against the said 'Judgment and Decree', no interference is warranted. The Appeal, therefore, stands dismissed.

10. At this stage, learned counsel for the Appellant seeks extension of the order of ad-interim relief, which was granted at the time when the Appeal was filed on 16th August 2016. However, considering the above-said facts, I do not find any reason to extend the said order, in view of dismissal of the Appeal. Hence, this request is also rejected.

11. In view of the above, Civil Application No.3734 of 2016 does not survive and the same stands disposed off as infructuous.

[DR. SHALINI PHANSALKAR-JOSHI, J.]