

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER (ST) NO. 21527 OF 2018
WITH
CIVIL APPLICATION (ST) NO. 21528 OF 2018
IN
APPEAL FROM ORDER (ST) NO. 21527 OF 2018

Smt. Sakuntala Gurusharam Barai and Anr.	.. Appellants/ Applicants
Vs.	
The Municipal Corporation of Greater Mumbai and Ors.	.. Respondents

Mr. Bholaprasad S. Shukla for Appellants/Applicants.
Mr. Anand R. Patil, AGP for Respondent No. 2 & 3-State.
Ms. Geeta Mule for Respondent-MHADA.
Mrs. Madhuri More for Respondent No. 1-MCGM.

CORAM : K.K. SONAWANE, J.

DATE : 7th August, 2018.

P.C. :-

1. Heard the learned Counsel for the appellants and the learned Counsel for the Municipal Corporation as well as the learned AGP for the State of Maharashtra. The affidavit-in-reply filed on behalf of respondent-Civic Authority is taken on record. The present appeal is directed against the impugned order refusing to grant ad-interim relief in Draft Notice of Motion filed in the L.C.Suit No. 1741 of 2018 by the learned trial Court.

2. The appellants are the original plaintiffs in the aforesaid L.C.Suit No. 1741 of 2018. They initiated the civil litigation for the relief to direct the defendants-Civic Authority to provide suitable permanent alternate accommodation in the locality, in lieu of the suit premises in pursuance to order passed by the Assistant Commissioner dated 12th December, 2008. The plaintiff also seeks declaration of the notice issued by the Assistant Engineer dated 13th April 2016 and respective orders passed by the Assistant Commissioner be declared illegal, bad in law and not executable in the eye of law. Simultaneously, the plaintiff also prayed for relief of injunction restraining the defendants from demolishing the suit structure.

3. Pending the suit, the appellants-original plaintiffs taken out the Notice of Motion for injunction restraining the defendants-Civic Authority from demolishing the suit structure. The Notice of Motion is served to the defendants-Civic Authority. The learned trial Court after appreciating the circumstances on record found reluctant to grant ad-interim relief in favour of appellants-plaintiffs and kept the Notice of Motion for further process for its adjudication on merits. Being dissatisfied with the order of refusal to grant ad-interim relief at the threshold of the suit, the appellants-plaintiffs approached to this Court and filed the present appeal.

4. During the course of argument, the learned Counsel for the appellant fairly conceded that the directions be issued to the learned trial Court for expeditious hearing of the Notice of Motion pending before it and till then maintain the status-quo, so that the present appeal can be disposed of.

5. I find force in the contentions put forth on behalf of appellants. Admittedly, the matter pertains to the ad-interim relief pending the suit. In view of nature of subject matter of the appeal instead of going deep into the merits of the matter at this stage to determine the issue of sustainability of ad-interim injunction as prayed on behalf of appellant-original plaintiffs, it would justifiable to allow the learned trial Court to determine the issue of interim injunction, after detailed enquiry into the notice of motion, on hearing of both sides on merit. It would subserve the purpose in the interest of justice.

6. The learned Counsel for the respondent-Civic Authority also shown inclination for the same to get notice of motion decided on merit at the earliest. In such circumstances, I find that it would just and proper to provide shelter of law to the appellants-plaintiffs, pending the Notice of Motion before the learned trial Court. Moreover, if this Court proceeded to adjudicate the appeal on merit

for ad-interim relief, indirectly it would amounts to deal with notice of motion on merit, which is pending for consideration before learned trial Court. This would nothing but an interference in the jurisdiction to be exercised by the learned trial court.

7. Accordingly, in view of aforesaid observations, the appeal stands disposed off with directions to the learned trial Court to determine the issue of interim relief pending the suit as prayed in the Notice of Motion, within a period of 3 months from the receipt of this order. Meanwhile, parties to maintain status-quo. In case, the learned trial Judge came across with any sort of non-cooperation or any dilatory tactics on the part of any of the parties to proceedings etc., the learned trial Judge is at liberty to take stern action and pass appropriate orders to enable the Court to adjudicate the notice of motion within stipulated period of three months mentioned above.

8. With the above directions, appeal stands disposed off. In view of disposal of appeal, Civil Application does not survive and stands disposed off.

(K.K. SONAWANE, J.)