

SSK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 65 OF 2018
IN
NOTICE OF MOTION NO. 54 OF 2011
WITH
CIVIL APPLICATION NO. 92 OF 2018
IN
APPEAL FROM ORDER NO. 65 OF 2018

Aisha Begum Islam ...Appellant

Versus

Mumbai Municipal Corporation & Anr ...Respondents

Mr. J. B. Mishra, for the Appellant.

Mrs. Madhuri More, for Respondents no.1/MCGM.

CORAM: Smt. Anuja Prabhudessai, J
DATE : 16th April, 2018.

PC:-

1. With consent of the parties, Appeal is taken up for the hearing at the stage of admission. The Appellant herein has challenged the impugned order dated 11th July, 2014, whereby the learned Judge, City Civil Court, Mumbai, dismissed the Notice of Motion No.54 of 2011 in LC Suit No.46 of 2011.

2. The Appellant claims that he is in occupation of Gala nos.7, 8 and 9. The grievance of the Appellant was that the Respondent – Corporation had issued a notice under Section 351 in respect of Gala nos.3, 4 and 5, however, the same was pasted on Gala no.8. Apprehending that the Respondent – Corporation would demolish Gala nos.7, 8 and 9, which are in his possession, the Appellant filed a Suit for injunction and filed Notice of Motion No.54 of 2011 to restrain the Corporation – Respondent from demolishing, removing and/or pulling down the suit premises i.e. Gala nos.7, 8 and 9 situated at Road no.1, Bharucha Tabela no.2, Pais Street, Byculla (W), Mumbai 400 011.

3. The learned Trial Judge has dismissed the Notice of Motion, only on the ground that the Plaintiff is claiming right in respect of the Galas/structures nos.7, 8 and 9 and he has not claimed any right in respect of Gala nos.3, 4 and 5. The learned Trial Judge, therefore, held that the Plaintiff has no cause of action in respect of Gala nos.3, 4 and 5.

4. It is to be noted that the Respondent – Corporation had filed its written statement, wherein it had categorically averred that Gala nos.3, 4 and 5 and Gala nos.7, 8 and 9 is one and the same structure. The learned Trial Judge has not considered these averments and has erred in holding that the Plaintiff has no cause of action. Consequently the findings recorded by the Trial Judge cannot be sustained.

5. The learned Counsel for the Appellant submits that the structures nos.7, 8 and 9 are not yet demolished and that he is still in possession of the said structure. He further submits that the evidence of the Appellant – Plaintiff is already completed before the Trial Court and that the Defendant – Respondent – Corporation, has also filed Affidavit-in-evidence and the Suit is at the state of cross-examination.

6. Considering the above facts, in my considered view, it would be appropriate that the parties maintain *status quo* in respect of the suit structure till the disposal of the Suit.

7. Under the circumstances, Appeal From Order is allowed. The impugned order is set aside and both parties are directed to maintain the *status quo* till the disposal of the suit. The learned Trial Judge is directed to dispose of the Suit as expeditiously as possible and in any event within a period of six months from the date of receipt of this order.

8. In view of disposal of the Appeal from Order, the Civil Application does not survive and is disposed of accordingly.

[Smt. Anuja Prabhudessai, J.]