

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (STAMP) NO.22734 OF 2018
ALONG WITH
CIVIL APPLICATION (STAMP) NO.22735 OF 2018

Joana Sidney Pereira	 Appellant-Applicant
V/s.	
The Municipal Corporation of Greater Mumbai and Anr.	 Respondents

Mr. Bholaprasad S. Shukla for the Appellant-Applicant.

Mrs. Madhuri More for Respondent No.1-MCGM.

Ms. Tanaya Goswami, A.G.P., for Respondent No.2.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 9TH OCTOBER, 2018.

P.C. :

1. Heard learned counsel for the respective parties.
2. This Appeal takes an exception to the order dated 19th July 2018, passed by the City Civil Court, Dindoshi, Mumbai, thereby refusing the ad-interim relief sought by the Appellant-Applicant in the Notice of Motion No.2082 of 2018 filed in L.C. Suit No.1520 of 2018.
3. The said Notice of Motion was taken out by the Appellant,

restraining the Respondent-Municipal Corporation from taking any action in pursuance of the notice issued under Section 354-A of the Mumbai Municipal Corporation Act, 1888, on 25th May 2018 and the order dated 18th June 2018 passed thereon, after hearing the Appellant.

4. The only contention raised by learned counsel for the Appellant is that, the description of the construction, as given in the impugned notice itself, shows that it was a completed construction and not an on-going construction. Even the order passed on the said notice also nowhere states that the construction is on-going. Hence, according to him, in the absence of any evidence, like the Panchanama or the complaint given to the Police, there is nothing on record to show that on 25th May 2018, it was an on-going construction.

5. Therefore, according to him, the notice issued under Section 354-A of the MMC Act is not legal and correct and hence, the Trial Court should have granted the ad-interim relief of injunction, restraining the Respondent-Municipal Corporation from taking any action in pursuance of the said notice or the order.

6. However, the impugned order passed by the Trial Court clearly goes to show that, the Respondent-Municipal Corporation has produced on record the photographs showing that, on the date when the notice

was issued, the construction of the first floor, i.e. the notice structure, was in progress, i.e. going on, and thereafter, as the Appellant has, despite the said notice, completed the construction, the detail order came to be passed after, giving him an opportunity of showing the legality and validity of the said construction. The Appellant has, however, failed to show that he was carrying out such construction or has carried out such construction after obtaining the requisite permission or getting the 'Plan' sanctioned from the Respondent-Municipal Corporation.

7. In view thereof, there is absolutely no justification to interfere in the impugned order passed by the Trial Court, refusing the ad-interim relief to the Appellant. The Appeal, therefore, holds no merits; hence, stands dismissed.

8. In view of the dismissal of the Appeal, Civil Application (Stamp) No.22735 of 2018 pending therein, does not survive and the same stands disposed off as infructuous.

[DR. SHALINI PHANSALKAR-JOSHI, J.]