

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.13338 OF 2017

Ms.Aminabi Haji Maqbool Chaudhary ... Petitioner

Vs.

Shri Rajesh Jain & Anr. ... Respondents

Mr.Salimuddin A. Shaikh for the Petitioner

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: JULY 3, 2018**

P.C. :

1. The record shows that respondent No.1 is served. The learned Counsel produces an acknowledgement of the notice given to respondent No.2 – Municipal Corporation, Mumbai. However, none appears for either respondent No.1 or respondent No.2.

2. Perusal the record and the order under challenge dated 26.7.2017 passed by the learned Judge of the Bombay City Civil Court, Greater Mumbai, in Notice of Motion in L.C. Suit No.1626 of 2017. The petitioner is the original plaintiff who has filed the suit for injunction and also for declaration that the construction

permission granted by the respondent Corporation is illegal and it is to be cancelled. Pending Suit, Notice of Motion was taken out seeking the relief of injunction against the construction carried out by respondent No.1 and also from dispossessing and alienating and disturbing the possession of the plaintiff in respect of the suit premises i.e., Shop No.9, William Jacks Compound, Nesbit Road, opposite Sales Tax Office, Mazgaon, Mumbai – 400010 admeasuring 415 sq.ft carpet area as also the mezzanine floor. The petitioner/plaintiff also prayed alternatively that pending the hearing and disposal of the suit, the respondents be directed to carry out the repair work of the drainage pipeline or be allowed to lay down new pipeline.

3. The learned Counsel for the petitioner has submitted that though the notices are served on the respondents, no appearance is filed by the respondents. He submitted that the order passed by the learned Judge granting relief of laying of drainage pipeline is illegal and he submitted that the trial Court has allowed the Motion partly and directed defendant No.1 to maintain status quo in respect of possession of the plaintiff. He submitted that he has filed this petition only for a limited relief that he be allowed to lay

drainage pipeline. The learned Counsel submitted that it causes destruction of the drainage pipeline; lot of inconvenience to the family of the plaintiff and also it is essential to have a covered drainage pipeline.

4. In the impugned order, the learned trial Judge has asked respondent No.1 to maintain status quo as the said relief or other perpetual injunction is not an issue before this Court at this stage. The only issue is either directing respondent No.1 to lay pipeline or to allow the plaintiff to lay a new one or repair the old pipeline connecting from her house to the main pipeline. Such a prayer cannot be opposed on any ground, as to have a drainage pipeline is a matter of hygiene for the entire city. Such a drainage pipeline cannot be destructed by anybody under any circumstances unless proper permission is taken from the Corporation.

5. In the present case, therefore, considering the dispute between the parties and the relief claimed, I pass the following order:

- a) The petitioner is allowed to either repair the old drainage pipeline or to replace it with a new drainage

pipeline connecting from her house to the main drainage pipeline;

b) The repaired pipeline or the new pipeline is not to be demolished or damaged or destructed by the respondents, without permission of the Court.

6. With the above directions, the Writ Petition is disposed of.

(MRIDULA BHATKAR, J.)