

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

APPEAL FROM ORDER (ST.) NO.25954 OF 2019

The Kurla Dawoodi Bohra Masjid & Kabristan Trust	...	Appellant
Versus		
The Municipal Corporation of Greater Mumbai	...	Respondent

.....

Mr. B.P. Shukla for the Appellant.
Ms. Madhuri More for the Respondent-MCGM.

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CORAM : S.C. GUPTE, J.

DATE : 20 SEPTEMBER 2019

P. C. :

. Heard learned Counsel for the parties.

2 **Rule.** Rule taken up for hearing forthwith by consent of the parties.

3 This Appeal from Order challenges an ad-interim order passed by the City Civil Court at Mumbai on a notice of motion. By the impugned order, the trial court rejected the application for ad-interim relief made by the Appellant (original plaintiff) in that motion.

4 It appears that originally, there was a notice issued by the

Respondent-corporation to the Appellant under Section 353-B of Mumbai Municipal Corporation Act, 1888 (“MMC Act”) as also a notice under Section 354 of that Act. It appears that in pursuance of these notices, a structural audit was carried out by the Appellant. The structural audit, carried out in the year 2015, suggests that the premises consisted of ground floor and first floor and a construction on the terrace of the first floor covered with tin sheets. It also appears that based on this structural audit report, the Appellant had even sought the Respondent-corporation’s permission for repairs and this permission was granted by the corporation. It further appears that in the year 2017, a notice was issued to the Appellant by the Respondent-corporation under Section 53(1) of Maharashtra Regional And Town Planning Act, 1966 (“MRTP Act”). That notice was the subject matter of challenge in an earlier suit filed by the Appellant, namely, L.C. Suit No.542 of 2017. There was protective relief in favour of the Appellant in that suit. In the backdrop of these facts, a further notice was issued by the Respondent-corporation to the Appellant, purportedly, as a follow-up to its original notice under Section 53(1) of MRTP Act, claiming that there was unauthorized construction by the Appellant over and above the ground plus one structure of the suit premises. The construction was said to be ‘Erection of MS Angles and GI Pipes’. This notice is the subject matter of challenge in the present suit, namely, L.C. Suit No.2363 of 2019, in which the Appellant prays for protective relief in respect of the last notice issued by the Respondent-corporation. On the Appellant’s notice of motion in that suit, the ad-interim relief was

refused to it. It appears that the trial court did not deem it fit to grant any ad-interim relief on the ground that covering of the terrace appeared to be a recent development attracting the provisions of MRTP Act. The court, primarily, relied on the fact that the enclosure covering of terrace on the suit structure was not referred to in the Appellant's earlier suit, namely, L.C. Suit No.542 of 2017.

5 It is true that covering of the terrace was not referred to in the earlier suit, but then it is equally clear that the Appellant went to the court with a specific case that the terrace was already covered with tin sheets when structural audit of the suit structure was carried out in pursuance of the earlier notices issued by the corporation. That was in the year 2015. It was after this structural audit that the notice under Section 53(1) of MRTP Act was issued by the Respondent-corporation and which notice was the subject matter of the earlier suit, where, as noted above, the Appellant had protective relief. The Appellant also contended before the court that based on the aforesaid structural audit report, the Appellant had even asked for permission to carry out repairs and the Respondent-corporation had granted such permission. These repairs were sought expressly on the basis of this very structural audit report. Strangely, though the trial court has referred to these circumstances including the structural audit carried out in the year 2015, it has not considered the effect of these circumstances in its impugned order. It has simply gone by the fact, as noted above, that the earlier suit of the Appellant did not refer to any construction on the terrace of the suit structure.

6 Considering the fact that there was some material before the trial court that the shed on the terrace of the suit structure was already existing when the plaintiff's earlier suit was filed and protective reliefs were granted, it was imperative for the court to at least protect the Appellant by an ad-interim order and then hear its notice of motion for continuation of such protective reliefs pending hearing of the suit. The Respondent-corporation anyway had not even filed any reply to the notice of motion.

7 Accordingly, **Rule** is made absolute and the Appeal from Order is allowed by quashing and setting aside the impugned ad-interim order dated 17 September 2019 and allowing the Appellant/plaintiff's ad-interim application. There will be ad-interim relief, accordingly, in terms of prayer clause -(a) of Notice of Motion No.3351 of 2019. The defendant-corporation may file its reply to the notice of motion within three weeks from today. The plaintiff may file its rejoinder within two weeks thereafter. The trial court is requested to dispose of the notice of motion as expeditiously as possible and preferably within a period of twelve weeks from today.

8 In the meantime, as condition of ad-interim protection granted in favour of the plaintiff, it shall maintain *status quo* in respect of the notice structure and not make any changes to it.

(S.C. GUPTE, J.)