

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

**APPEAL FROM ORDER (ST) NO. 26336 OF 2019
WITH
INTERIM APPLICATION NO. 2 OF 2019
INTERIM APPLICATION NO. 1 OF 2019
AND
INTERIM APPLICATION NO.3 OF 2019**

B.H. Chemburkar Mandai Licensee's Association & Ors. ...Appellants
vs.
The Municipal Corporation of Greater Mumbai ...Respondent

Mr.M.V. Holamagi for Appellants.

Mr.Joaquim Reis, Senior Advocate with Dhruti Kapadia & Madhuri More
for Respondent.

Ms.Gayatri Singh, Senior Advocate with V.G. Sreeram, Ankit Kulkarni
i/b. Rohita Bhattacharya for Applicant in IA 3/2019.

CORAM : S.C. GUPTE, J.

DATE : 17 OCTOBER 2019

P.C. :

Heard learned Counsel for the parties.

2 This appeal from order challenges an order passed by the Bombay City Civil Court at Greater Mumbai on a notice of motion of the Appellants (original Plaintiffs). By the impugned order, the notice of motion of the Plaintiffs has been dismissed by the trial court. There is a delay in filing the present appeal from order. Interim Application No.2/2019 has been taken out for condonation of that delay. For the reasons stated in the application, the delay is condoned. Registry to number the appeal from order accordingly. The interim application is disposed of.

3 After the matter is heard at some length by this court, learned Counsel for the parties agree that the impugned order of 24

June 2019 may be quashed and set aside and Notices of Motion No.2135/2017 and 2337/2017 of the Plaintiffs may be remanded to the trial court for a fresh hearing in accordance with law. The Plaintiffs' notice of motion for setting aside the order passed on 12 March 2019 under Order 9 Rule 11 of the CPC dismissing the suit for default is allowed. The suit is restored to file along with Notices of Motion No.2135/2017 and 2337/2017. Both these motions shall be heard from the stage at which the suit was dismissed by the trial court. All rights and contentions of the parties including the intervener in the present AO, namely, Baman Dev Koli Mase Vikreta Seva Sangh, are kept open. The Defendant Municipal Corporation of Greater Mumbai, shall be entitled to file an additional affidavit/s opposing the notices of motion. Such affidavit/s may be filed within a week from today. Rejoinder/s, if any, by the Plaintiffs or others to be filed within two weeks thereafter. The City Civil Court is requested to dispose of Notices of Motion No.2135/2017 and 2337/2017, as expeditiously as possible and latest by 30 November 2019. It is imperative that for expeditious disposal of both notices of motion, all parties must co-operate and not deploy any dilatory tactics.

4 Needless to add, since the impugned order of dismissal of the suit as well as the notices of motion has been set aside by this order, status quo ante shall revert and accordingly, interim protection granted by the court, which was operative as of the date of dismissal of the suit, shall continue to operate until further orders of the City Civil Court. In case the intervener herein, Baman Dev Koli Mase Vikreta Seva Sangh, proposes to file any intervention application in the pending proceedings before the City Civil Court, they may do so within one week from today. Responses of other parties to such intervention, if any, must be filed within two weeks thereafter. The contentions of the parties about the locus of Baman Dev Koli Mase Vikreta Seva

Sangh including the contention of the Defendant corporation that by reason of the order passed by this court on 27 September 2019 in Interim Application No.1/2019 in Writ Petition No.6405/2019, the Applicant intervener has no locus to challenge the corporation's proposal of demolition of the original market and reconstruction thereof, are kept open.

5 In view of the disposal of the appeal from order, all interim applications therein are disposed of.

(S.C. GUPTE, J.)