

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

**CIVIL APPLICATION NO.4146/2014
in
FIRST APPEAL NO.1548/2013**

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
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Advocate Mr.Bholaprasad S. Shukla for applicant.

Advocate Ms. Sheetal Mane for MCGM.

**CORAM : K. K. TATED, J
DATE : AUGUST 23, 2019.**

P.C.:

Heard learned counsel for parties.

2. By this Civil Application, applicant/plaintiff is seeking order of injunction restraining respondent/Corporation from taking any action in respect of suit premises namely shop no.11, Manjuwadi, Gopal Mistry Compound, Dharavi, Mumbai-17 pursuant to notice dated 16.1.2010, issued u/s 314 of MMC Act and order dated

11.3.2010 and 29.7.2011 passed by Assistant Commissioner and notice dated 25.11.2014 issued u/s 488 of Mumbai Municipal Corporation Act.

3. Learned counsel for applicant submits that as on today applicant is in possession of suit premises. He submits that though respondent stated in affidavit in reply that, the suit structure is demolished, it is not correct. Respondent/Corporation only demolished part structure. Applicant is in possession of suit structure. In view of these facts, learned counsel for applicant submits that, this court be pleased to allow civil application in terms of prayer clause (a). He submits that if prayer (a) is not granted, irreparable loss would be caused to applicant.

4. Learned advocate for applicant submits that as applicant is in possession as on today, this Court be pleased to allow civil application in terms of prayer clause (a). He submits that if stay is not granted, respondent may demolish entire structure. In that case irreparable loss would be caused to applicant.

5. On the other hand, learned advocate appearing on behalf of respondent/Corporation vehemently opposed the application. Respondent/Corporation filed their affidavit in reply dated 16.8.2019 stating that the suit structure was demolished on 13.3.2010. After demolition, applicant re-constructed the same and therefore, respondent/Corporation issued notice u/s 488 of MMC Act dated 25.11.2014 in respect of suit structure.

6. It is to be noted that in present proceeding initially applicant filed L.C.Suit No.645/2919 before City Civil Court, Bombay for declaration and injunction with following prayers which reads thus;

a) It may be declared this Honourable Court that plaintiff is entitled for permanent alternate accommodation in lieu of suit premises and defendants be ordered and decreed to provide the alternate accommodation to plaintiff and this Honourable court be pleased to declare that notice daetd 16.1.2010 issued u/s 314 of BMC Act and order dated 11.3.2010 passed by Asstt. Commissioner, G/NorthWard in respect of suit premises are illegal, malafide and liable to be set aside.

(a-1) That this Honourable Court be pleased to declare that the order dated 29.7.2011 passed by the Asst.Commissioner G/North Ward,

declaring plaintiff is not eligible for alternate accommodation in lieu of suit premises is malafide, bad in law and not executable in law.

(b) That the defendants, their servants, agents and officers and all persons claiming through them or under them be permanently restrained by order and injunction of this Honourable Court from in any manner removing and/or demolishing and/or pulling down the suit premseis viz. Structure admeasuring 20'x50' made of BM wall and DC sheet roof situated at Manjuwadi, Gopal Mistry Compound, AKG road, Dharavi Mumbai-17 in pursuance of notice dated 16.1.2010 issued u/s 314 of BMC Act and order dated 11.3.2010 passed by Asst.Commissioner, G/North.

(c) that interim and adinterim reliefs in terms of prayer (b) above be granted.

d)Costs and professional costs of this suit be provided for.

(e) such other and further reliefs as this Honourable Court may deem fit and proper be granted.

7. Said suit was dismissed by the trial court by order dated 6.7.2013 by framing following issues.

1)Whether the plaintiffs prove that notice dated 16.1.2010 and order dated 11.3.2010 are illegal and void? - In negative.

2) Whether the plaintiff proves that he is entitled to get an alternate accommodation from the defendant/BMC? - In negative.

3) Whether the plaintiff prove that the order dated 29.7.2011 passed by defendant/BMC is illegal, bad in law and malafide? - In negative.

4) Whether the plaintiff is entitled to get declaration and permanent injunction as prayed for ? - In negative.

5)What order and decree? - As per final order.

8. Learned counsel for respondent/Corporation submits that though suit structure was demolished in 2010, plaintiff again re-erected same. Hence, they issued notice dated 25.11.2014 to applicant calling upon him to remove the said structure.

9. It is to be noted that the trial court by its Judgment and Decree dated 6.7.2013 dismissed applicant/plaintiff's suit without granting any injunction. Bare reading of reply filed by Corporation clearly shows that applicant re-erected said structure. Para 9 of affidavit in reply reads thus;

“9. I say that the present Civil Application for directing the court to grant repair permission to Shop No.11 made up of patra sheet wall and A.C.Sheet roof. I say that the appellant in the cross examination (page No.106) admitted that suit structure was demolished by the Corporation on 17.3.2010. I say that the evidence filed by the Corporation the appellant advocate did not cross examine the officer on the said point of demolition by the appellant. If the structure was demolished the question of repairing the said structure does not arise and hence, appellant is not entitled for any relief from this Hon’ble Court and present Civil Application is liable to be dismissed. I say that the appellant is not entitled for any relief from this Hon’ble Court and present Civil Application is liable to be dismissed with costs. I say that it shows that the appellant has not come with clean hands and present Civil Application is liable to be dismissed.

Therefore, there is no question of granting any interim relief in favour of applicant.

10. Hence, the following order.

- a) Civil Application stands rejected.
- b) No order as to cost.

(K.K.TATED, J.)