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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER (ST) NO. 28815 OF 2019
WITH
INTERIM APPLICATION NO. 01 OF 2019

Mr. Sunil Harischandra Dhumal

... Appellant.
(Orig. Plaintiff)

Versus

State of Maharashtra and Ors.

... Respondents.

.....

Mr. Amar Bhatt i/b Yogesh D. Keny a/w Namrata Kadam for the Appellant.

Smt. Madhuri More for the Respondent Nos.2 & 3.

.....

CORAM : A. S. GADKARI, J.

DATE : 26th NOVEMBER, 2019

P. C. :

1. By the present appeal, the appellant / original plaintiff has impugned Order dated 6th November 2019, thereby refusing to grant ad-interim relief in favour of the plaintiff by the learned Judge, City Civil Court, Mumbai in Draft Notice of Motion in Suit No. 11745 of 2019.

2. Heard Mr. Bhatt, learned counsel for the Appellant at length and Smt. More, learned counsel for the Respondent Nos.2 and 3 – Corporation. Perused the entire record annexed to the appeal.

3. The record indicates that, the respondent – Corporation has issued notice dated 5th February 2019 under Section 351 of the Mumbai

Municipal Corporation Act, 1888 (for short “the MMC Act”) and Order passed thereon dated 13th March 2019 bearing Ref. No. 84386 calling upon the appellant to remove and/or demolish unauthorised construction of a room admeasuring 3.0 mtr. x 2.4 mtr., more particularly mentioned in the notice along with sketch drawn thereon.

4. The appellant has challenged the said notice dated 5th February 2019 and Order passed thereon on 13th March 2019 by filing the L.C. Suit No. 11745 of 2019. The appellant has also filed Draft Notice of Motion in the said suit with a prayer that pending the hearing and final disposal of the said suit, by an Order of temporary injunction the Corporation may be restrained from taking any kind of action in furtherance of show cause notice dated 5th February 2019 and order passed thereon 13th March 2019.

The Trial Court by its impugned Order has refused to grant ad-interim relief and has granted leave to register the Notice of Motion.

5. Learned counsel for the appellant, during the course of his arguments wants this Court to infer that the suit structure is an authorised structure as it is standing thereon for last more than 50 years and therefore it is legal. Learned counsel for the appellant is unable to point out any permission granted by the Competent Authority to construct the suit structure.

6. In absence of the any lawful permission from any Competent Authority, no inference can be drawn that, the suit structure is authorised

and legal structure, erected by the appellant. It is the reason that, the respondent-Corporation has issued notice under Section 351 of the MMC Act to the appellant, directing him to remove unauthorised structure, failing which the Corporation may initiate necessary action as contemplated under the law.

7. After perusing the entire record, this Court is of the considered view that the Trial Court has not committed any error while refusing to grant ad-interim relief to the appellant.

8. The Appeal being de hors of merits, is accordingly dismissed.

9. In view of the dismissal of the Appeal, Interim Application No. 1 of 2019 does not survive and is accordingly disposed off.

(A. S. GADKARI, J.)