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

**INTERIM APPLICATION NO. 1 OF 2019
IN
APPEAL FROM ORDER ST. NO.29666 OF 2019**

Mrs. Munni Birendra Gupta
alias Phulkumari Gupta

..Applicant

Vs

Assistant Commissioner-A Ward & Anr

..Respondents

Mr. Anil Mishra i/b Mukesh S. Pandey for Applicant/Appellant.
Ms. Madhuri More for Respondent Nos.1 and 2.

**CORAM : A.S.GADKARI, J.
DATE : 6th January 2020.**

P.C.:

1] By the present appeal, the appellant has impugned Order dated 7th October 2019 passed by the learned Judge of City Civil Court, Greater Mumbai in Notice of Motion No.4493 of 2017 in L.C. Suit No. 819 of 2016 thereby dismissing the said Notice of Motion.

2] Heard learned counsel for the appellant and the learned counsel for the respondents. Perused the entire record annexed to the appeal.

3] The record reveals that, the appellant/original plaintiff was granted licence to carry on business of selling cloths at Fashion Street, Mumbai. That, since year 2002 the appellant did not pay the license fees to the Municipal Corporation. That after the first inspection by the Officers of the Corporation, the appellant on 23.1.2009 alleged to have sent a letter to the Senior Inspector, Licensing Department, A-Ward of

the Corporation contending that, she is ready and willing to pay the balance of licence fees. However, as a matter of fact the appellant did not pay the licence fees.

The Officers of the Municipal Corporation subsequently again inspected the suit premises on 11th March 2016 and found that, the appellant herself was not conducting business at said stall and also the license granted to the appellant was not produced on demand by the person who was conducting business in the premises. That the appellant did not pay the licence fees for pretty long period and articles/goods were found kept outside hanging at the kiosk/stall of the appellant. The Corporation therefore issued a Notice dated 31.3.2016 to the appellant. The appellant replied the said notice through her Advocate on 5.4.2016. That by an Order dated 5.4.2016, the Licensing Authority cancelled the licence granted to the appellant and directed her to remove her kiosk/stall, failing which the same will be removed by the Corporation at the risk and consequence of the appellant.

The appellant thereafter filed a Suit for declaration that the Notice dated 11.3.2016 and Order dated 5.4.2016 are illegal, bad in law, null and void. The Trial Court by its Order dated 7.10.2019 dismissed the Notice of Motion No.4493 of 2017.

4] Learned counsel for the appellant submitted that, the appellant on various occasions tried to pay the licence fees to the Corporation, however, for the reasons best known to it, the concerned Officer of the Corporation did not accept it. That on the date of inspection by the concerned Officer of the Corporation i.e. on 9.3.2016, the appellant was not keeping well and therefore she was not present at her shop. He submitted that, the appellant is ready and willing to pay the balance of licence fees to the Corporation.

He therefore prayed that, the impugned Order dated 7.10.2019 passed by the Trial Court may be set aside by allowing the present appeal.

5] Perusal of the record would indicate that, except letter dated 23.1.2009, no other documents are produced by the appellant from which it can even remotely be inferred that, the appellant was in fact pursuing with the concerned Authority to accept the licence fees and renewal of the licence. There is no contemporaneous record produced at least at this stage to infer that the appellant was in fact serious enough to pay the licence fees. The facts mentioned in the Notice dated 11.3.2016 and as narrated hereinabove are the admitted facts on record and the same can be contradicted before the Trial Court by adducing cogent evidence at the time of trial.

6] It appears that, the appellant has clearly violated terms and conditions of the Licence issued to her by the Corporation and has also not paid licence fees for last many years. I find that, balance of convenience does not lie in favour of the appellant and no irreparable loss would be caused if injunction is not granted in her favour.

7] The Trial Court has not committed any error while passing impugned Order. I find no merits in the present appeal and the same is accordingly dismissed.

In view of dismissal of appeal, Interim Application does not survive and the same is accordingly disposed off.

(A.S.GADKARI, J.)