

Tandle

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 312 OF 2019
WITH
CIVIL APPLICATION NO. 377 OF 2019
WITH
CIVIL APPLICATION NO. 213 OF 2019
WITH
REVIEW PETITION NO. 6 OF 2019
WITH
REVIEW PETITION NO. 7 OF 2019

Mrs. Maria Dominic D'Souza

... Appellant/
Applicant.

Versus

The Municipal Corporation of Gr. Mumbai

... Respondent.

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Mr. Vedchetan Patil for the Appellant.

Mr. Narendra V. Walawalkar, Sr. Counsel a/w Mr. Rajesh Behre a/w Mrs. Madhuri More for the Respondent-MCGM.

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CORAM : A. S. GADKARI, J.

DATE : 9th JANUARY, 2020

P. C. :

1. By the present appeal under Order 43 of the Civil Procedure Code, the appellant has impugned Order dated 28th November 2018 passed in Draft Notice of Motion in L. C. Suit No.3367 of 2018 by the learned Judge, City Civil Court, Borivali Division, Greater Mumbai, thereby refusing to grant ad-interim relief in terms of prayer clause (a) of the said Draft Notice of Motion.

2. Heard Mr. Patil, learned counsel for the Appellant and Mr. Walawalkar, learned Senior Counsel for the Respondent–Corporation. Perused the entire record produced before this Court.

3. The record indicates that, the Corporation has issued notice dated 3rd October 2018 under Section 351(1) of the Mumbai Municipal Corporation Act, 1888 (for short, “the MMC Act”) to the applicant who is owner of Flat No.001, Ground Floor, Wahedna Apartment Co-operative Housing Society, Bandra (West), Mumbai, alleging that the appellant has constructed unauthorised horizontal extension to the existing flat as shown in sketch appended to the said notice and demarcated in red colour. The appellant replied to the said notice through her Advocate on 6th October 2018. The Corporation thereafter passed Order dated 12th November 2018 directing the appellant to either remove the said unauthorised construction failing which it will be demolished by the Corporation.

4. The appellant therefore filed the aforesaid suit for declaration that, the impugned Order dated 12th November 2018 passed in impugned notice dated 3rd October 2018 under Section 351 of the MMC Act is misconceived, malafide, illegal, bad-in-law, nullity and without jurisdiction and the same can not be enforced against the appellant in respect of the suit premises. The appellant also filed Draft Notice of Motion for ad-interim relief.

The Trial Court by its impugned Order dated 28th November 2018 was pleased to refused to grant ad-interim relief in terms of prayer clause (a) of the said Notice of Motion.

5. The record further indicates that, there was some ambiguity and/or controversy in the schedule mentioned in Notice dated 3rd October 2018, this Court by its detailed Order dated 25th September 2019, directed the Corporation to take the measurements at site and come up with its precise case on whether and if so, how much of the areas of, the suit flats are included within the alleged unauthorised horizontal extensions. The Corporation was permitted to depute its representative to take measurement and prepare a plan showing the exact areas and dimensions of alleged unauthorized extensions of Flat No.1.

6. Mr. Walawalkar, learned senior counsel for the Corporation in pursuance of Order dated 25th September 2019 has today produced a report dated 28th September 2019 signed by the Executive Engineer (D.O. B&F), H/West, thereby specifically mentioning the measurements and unauthorised constructions carried out by the appellant in the suit premises. It is stated as under :-

Flat No.G-01, Mrs. Maria Dominic D'Souza

a) Living room is extended horizontally with partly brick masonry wall (height-4'), cladding window and M. S. Grill admeasuring 11' X 3' and height 10'.

It is further stated therein that, in the event of Court coming to the conclusion that, the above stated constructions in both the Flats are

unauthorise, no structural members of the original building will be damaged during demolition.

7. It is thus apparent that, the appellant has carried out unauthorized construction in the suit premises.

It is to be further noted here that, the appellant has failed to produce any document on record even to remotely infer that, she was permitted to carry out the said construction by the Corporation or any other Competent Authority. For want of lawful permission from the Competent Authority for carrying out the said construction, the appellant can not be permitted to continue with the illegality committed by her under the seal of the Court.

8. Perusal of record would indicate that, the Trial Court has not committed any error while passing impugned Order.

In view thereof, this Court finds no merits in the Appeal. Appeal is accordingly dismissed.

9. In view of the dismissal of Appeal, Civil Application No.377 of 2019 and Civil Application No. 213 of 2019, Review Petition No. 6 of 2019 and Review Petition No. 7 of 2019 do not survive and are accordingly disposed off.

10. At this stage, learned counsel for the appellant submitted that, he intends to challenge the present Order before the Hon'ble Supreme Court and therefore the operation and implementation of the present Order may be stayed for a period of four weeks from today.

At his request, the operation and implementation of the present Order is stayed for a period of four weeks from today.

(A. S. GADKARI, J.)