

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****APPEAL FROM ORDER NO. 170 OF 2021****WITH****I.A. NO.1717 OF 2021****IN****APPEAL FROM ORDER NO. 170 OF 2021**

Rajaram Ramprasad Dhobi @ Tilak

.....Appellant/
Applicant.

Vs.

Mumbai Municipal
Corporation Of Greater Mumbai & Anr.

.....Respondents.

WITH**I.A. NO.1716 OF 2021****IN****APPEAL FROM ORDER NO. 170 OF 2021**The Bandra Holy Family Hospital Society,
Through Sr. Silji George Trustee and Treasasurer

....Applicant

IN THE MATTER BETWEEN-

Rajaram Ramprasad Dhobi @ Tilak

.....Appellant/
Applicant.

Vs.

Mumbai Municipal
Corporation Of Greater Mumbai & Anr.

.....Respondents.

Mr. Atul Damle, Senior Advocate a/w Mr. Y.E. Mooman i/by Manisha
Gawade for the Appellant/Applicant.

Smt. Madhuri More for Respondent No.1-MCGM.

Mr. S.C. Naidu a/w Mr. Suresh Kumar i/by C.R. Naidu & Co. for the
Respondent No.2 and Applicant in I.A. No.1716 of 2021.**CORAM : A. S. GADKARI, J.****DATE : 1st SEPTEMBER, 2021.**

P.C.:-

Heard Mr. Damle, learned Senior counsel for the Appellant/Plaintiff, Smt. More, learned Advocate for the Corporation and Mr. Naidu, learned counsel for Respondent No.2-landlord. Perused entire record.

2 By the present Appeal, the Appellant - a tenant, has impugned Order dated 2nd November, 2020 passed in Draft Notice of Motion in (Stamp No.4056 of 2020) L.C. Suit No.1215 of 2020, by the learned Judge, City Civil Court, Borivali Division, Dindoshi, Mumbai, thereby dismissing the said Motion.

3 Appellant has challenged notice bearing No. HW/DO2HW/101/351-MMC ACT/HW507No.1/30-11-2019 dated 2nd December, 2019 and a Speaking Order dated 22nd October, 2020, passed by the Designated Officer in respect of the suit structure by filing the aforesaid Suit. He also took out a Draft Notice of Motion in the said Suit for interim reliefs. As noted earlier, the Trial Court by its impugned Order dated 2nd November, 2020, has dismissed the said Notice of Motion at its threshold.

4 The record indicates that, in pursuance of Order dated 27th November, 2020 passed by my predecessor-in-title, the Respondent No.1 Corporation has filed a detailed Affidavit-in-reply dated 8th January, 2021 and has annexed relevant photographs of the Suit structure. The said

photographs clearly indicate that, the extension as mentioned in the Suit notice, is supported by MS Angles/Grills, which is *prima facie* without the sanctity of law.

5 Mr. Naidu, learned counsel for the Respondent No2.-landlord, submitted that, the landlord has given the premises on rental basis to the Appellant, which is painted in yellow paint and is only ground floor structure. He, on instructions, makes a categorical statement that, the extension carried out by the Appellant and which can be seen by plain eyes in the photographs, is wholly an unauthorized structure. The said submission is duly supported by the sketch/diagram given in Notice dated 2nd December, 2019 issued by the Designated Officer of the Respondent No.1-Corporation.

6 The Appellant has failed to produce on record any permission given by any Competent Authority to erect the Suit structure. A safe inference can therefore be drawn that, the said structure is illegal and unauthorized and the Designated Officer of the Respondent No.1-Corporation has rightly issued notice dated 2nd December, 2019, under Section 351 of the Mumbai Municipal Corporation Act, 1888 to the Appellant. No *prima facie* case is made out to grant injunction in favour of Appellant.

7 Perusal of entire record clearly indicates that, the Trial Court has not committed any error either in law or on facts while passing the

impugned Order.

Appeal is de hors of merits and is accordingly dismissed.

In view of dismissal of Appeal from Order itself, nothing survives in Interim Application Nos.1717 of 2021 and 1716 of 2021 and both these Interim Applications are also disposed off.

8 At this stage, the learned counsel for the Appellant requested to continue the ad-interim relief granted earlier. As the structure is erected without having any lawful permission in that behalf, the said request is rejected.

(A.S. GADKARI, J.)

SANJIV
SHARNAPPA
MASHALKAR

Digitally signed
by SANJIV
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MASHALKAR
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