

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****APPEAL FROM ORDER NO. 357 OF 2021
WITH
INTERIM APPLICATION NO. 3074 OF 2021**

Smt. Rashmi Ramesh Mhatre and Ors.

... Appellants
(Orig.Plaintiffs.)

V/s.

The Municipal Corporation of Greater Mumbai
and Others.

... Respondents
(Orig.Defendants.)

**WITH
INTERIM APPLICATION NO. 3075 OF 2021
IN
APPEAL FROM ORDER NO.357 OF 2021**

M/s. Smile Shelter.

... Applicant.

In the matter between :-

Smt. Rashmi Ramesh Mhatre and Ors.

... Appellants

V/s.

The Municipal Corporation of Greater Mumbai
and Others.

... Respondents

Mr. Jitendrakumar G. Damani a/w Ms.Mansi C. Pandit and Shawn Fernandes
for Appellants in AO No.357 of 2021 and IA No.3074 of 2021.

Mr. Kavyal Shah a/w Mr. Swapan Samdani for Respondent Nos.5 to 8 and for
Applicant in IA No.3075 OF 2021.

Ms.Tanaya Goswami, A.G.P. for Respondent – State.

Smt.Madhuri More for Respondent – MCGM.

CORAM : A.S. GADKARI, J.
DATE : 26th October, 2021.

PC. :

1. By the present Appeal under Order 43 Rule 1 of the Code of Civil Procedure, the Appellants/original Plaintiffs have impugned Order dated 18th September, 2021 passed in Notice of Motion No.1777 of 2021, thereby refusing to grant ad-interim relief in favour of the Appellants.

2. At the outset, it is to be noted here that, the Appellants though not suppressed but have not annexed to the Appeal most important document, i.e. an Order dated 27th June, 2017 passed in Notice of Motion (L) No.1070 of 2017 in Suit (L) No.316 of 2017 by this Court, thereby disposing of the said Notice of Motion along with Suit in view of the Consent Terms filed by the parties therein. That, the Appellants herein were Defendants in the said suit and had agreed to abide by certain obligations, more specifically mentioned in the said Consent Terms dated 27th June, 2017. The said Order holds field as of today and is not set aside either by higher Court or by any Court of Competent Jurisdiction.

3. In this background, the Appellants filed the present suit bearing L.C. Suit No.1752 of 2021 for an Order and Decree declaring that, the IOD (Intimation of Disapproval) issued under Section 346 of the Municipal Corporation Act, 1888 by the Defendants Nos.3 and 4 therein is not binding upon the Appellants; bad in law and for other various consequential reliefs, more specifically mentioned in the prayer clause of the Plaint.

The Appellants also filed Notice of Motion No.1777 of 2021 with it for interim reliefs. As noted earlier, the Trial Court by its impugned Order dated 18th September, 2021 has refused to grant ad-interim relief in favour of the Appellants.

4. It is to be noted here that, the IOD (Intimation of Disapproval) is issued in favour of Shri Samir Pravin Sanghvi, partner of M/s. Smile Shelters, who has purchased 50% of the undivided share from the co-owners of the suit property, namely, Mr.Jayprakash Narayan Patil and Anil Narayan Patil. It is the said Smile Shelters, who is constructing the building on the suit property. Despite the said fact and relief is sought for declaration the said IOD (Intimation of Disapproval) as bad in law, the said 'Smile Shelters' has not been impleaded as a necessary party in the suit so also in the present Appeal.

5. In view of the above, this Court is of the considered view that, no case to interfere with the impugned Order is made out. Perusal of impugned Order indicates that, no error apparent on the face of record is committed by the Trial Court while passing the same.

Appeal being de hors of merits, is accordingly dismissed.

6. In view of dismissal of Appeal itself, Interim Application Nos.3074 of 2021 and 3075 of 2021 do not survive and are accordingly disposed off.

[A.S. GADKARI, J.]