

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.144 OF 2022
ALONG WITH
INTERIM APPLICATION NO.947 OF 2022

Madhav Shankar Pimpalkar] ... Appellant

Vs.

The Municipal Corporation for]
Greater Mumbai & Anr.] ... Respondents

...

Mr. Pradeep J. Thorat i/b Mr. Sachin Gelye for the appellant.

Mr. Santosh Parad for the respondent-MCGM.

...

CORAM : SMT. BHARATI DANGRE, J.

DATED : 23RD MARCH, 2022.

P.C. :-

1. Heard the learned counsel for the appellant and the learned counsel for the Corporation.
2. By the present appeal, what is called in question is rejection of the ad-interim relief by the City Civil Court in S.C. Suit (St.)

No.11679 of 2021, which raises a challenge to the notice dated 18/11/2021 and the order passed thereupon on 21/12/2021.

3. Perusal of the notice dated 21/12/2021 reveals that the owner/occupier, to whom the notice was issued, sought time to file certain documents but since he was unable to bring the documents on record within the period stipulated, the Corporation passed the order in absence of the said documents.

4. On 03/01/2022, the appellant tendered the necessary documents to the designated officer of the B & F Department of the Corporation and pursuant to the receipt of the said documents, the Corporation has passed a fresh speaking order on 08/03/2022, maintaining its earlier decision, based on the documents placed on record and on the conclusion being derived that the existence of the structure prior to the datum line is not established. The net result of the order dated 08/03/2022 remains the same as the order dated 21/12/2021.

5. The learned counsel for the appellant states that being aggrieved by the order dated 08/03/2022, a fresh notice of motion is filed along with chamber summons, seeking amendment in the suit. The subsequent events demand that the chamber summons and the notice of motion be decided independently and since the earlier order dated 21/12/2021 has now merged in the order dated 08/03/2022, the notice of motion deserves a hearing expeditiously.

6. In the wake of the above, the appeal is disposed off with a direction to the learned Judge to take up the notice of motion filed by the appellant along with the chamber summons, for hearing.

[SMT. BHARATI DANGRE, J.]