

Diksha Rane

Digitally
signed by
DIKSHA
DINESH
RANE
Date:
2022.09.30
20:24:37
+0530

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

**APPEAL FROM ORDER NO. 354 OF 2021
WITH
INTERIM APPLICATION NO. 830 OF 2022
WITH
INTERIM APPLICATION NO. 3557 OF 2021**

CAPT. HARESH GAGLANI (RETD) ..APPELLANT
VS.
THE MUNICIPAL CORPORATION OF GREATER MUMBAI ..RESPONDENT

Adv. Prashant Pandey a/w. Adv. Irfan Unwala, Adv. D. Jain,
Adv. H. Shroff i/b. W3LEGAL LLP for appellant.
Mr. R. Y. Sirsikar for the MCGM.

CORAM : M. S. KARNIK, J.

DATE : SEPTEMBER 28, 2022.

P.C. :

- 1.** Heard learned counsel for the appellant.
- 2.** The order under challenge is passed by the City Civil Court on 30/3/2021 refusing the grant of ad-interim relief in favour of the appellant-plaintiff. Before the City Civil Court, the appellant had challenged the notice issued under Section 351 of the Mumbai Municipal Corporation Act, 1888 (hereafter 'the MMC' for short) dated 7/10/2013. The details of the unauthorized structure is mentioned in the said notice.
- 3.** It is the allegation that by making such unauthorized

construction and putting AC sheet roof on the wooden framework, the appellant have encroached upon the Southern side of the terrace of the building which belongs to the society. Learned counsel for the appellant submits that according to him, there is no encroachment as disputed portion is purchased by him.

4. The trial Court by order dated 30/3/2021 refused to grant any ad-interim relief. The Notice of Motion is pending. It is not disputed that till date, the notice under Section 351 is not enforced. Learned counsel for the appellant submitted the appellant is now in possession of the documents to establish that the structure can be said to be tolerated structure which was constructed in 1960 prior to the datum line. These documents, however, were not available with him when ad-interim order came to be passed by the trial Court. Substantial amendments are carried out in the appeal.

5. In my view, instead of considering the contentions of the appellant in the present appeal, as the documents were never produced before the City Civil Court in the first instance, it would be appropriate if the relevant documents are placed for consideration before the trial Court, as in any case the Notice of Motion is yet to be decided.

6. I am informed that the Notice of Motion is listed tomorrow before the trial Court. Liberty to the appellant to produce necessary documents and in fact learned counsel

submits that necessary application for amendment has already been filed before the trial Court. If that be so, the trial Court is requested to decide the Notice of Motion itself expeditiously and preferably within a period of 16 weeks from today. Till the Notice of Motion is decided, the Corporation not to enforce the notice under Section 354-A of the MMC Act.

7. Needless to mention that the trial Court shall proceed to decide the Notice of Motion on its own merits without influenced by the order impugned and the observations made by me in this order.

8. Appeal from order is disposed of.

9. The interim applications are also disposed of.

(M.S.KARNIK, J.)