

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

***APPEAL FROM ORDER NO.300 OF 2019
WITH
CIVIL APPLICATION NO.375 OF 2019***

Mr. Bhagwan Krushna Shetye	...Appellant
Vs	
Municipal Corporation of Gr. Mumbai	...Respondent
...	

Mr. S.G.Deshmukh i/by Mr. Yogesh D. Dalvi for the Appellant.
Mr. R.Y.Sirsikar for MCGM.

CORAM : SANDEEP K. SHINDE J.
DATE : APRIL 28, 2022.

P.C. :

Heard learned counsel for the parties.

2 In Long Cause Suit No.4117 of 2013, appellant/plaintiff has questioned the legality of the notice under Section 351 of the Mumbai Municipal Corporation Act, 1888 dated 13th August, 2013 and the order dated 12th October, 2013 passed by its officer. Pending Notice of Motion, the learned Judge refused to grant ad-interim injunction. That order was challenged in Appeal From Order No.1204 of 2013. This Court vide order dated 26th November, 2013 granted

interim order as to no coercive steps be taken by the respondents pursuant to notice under Section 351 of the MMC Act. Whereafter, trial Court vide order dated 14th October, 2016 refused the interim relief. As a result, Notice of Motion No.883 of 2013 was rejected on 14th October, 2016. That order is under challenge in this Appeal From Order.

3 On 26th November, 2013, this Court restrained the Municipal Corporation from taking further coercive steps. As a result, Notice Structure is protected from demolition since 2013, i.e., over a period of 9 years. It is informed that plaintiff has filed affidavit in lieu of evidence and the trial in the Long Cause Suit No.4117 of 2013 has commenced.

4 In consideration of these facts and in particular that Notice Structure has been protected, since 2013, it would be expedient, to protect the Suit Structure pending suit; or else suit would be rendered infructuous. Thus, in facts and circumstances of the case, no interference is called for in the impugned order. As a

result, Appeal From Order is dismissed. However, learned trial Court shall conclude the trial before 31st December, 2023. It is clarified that trial Court shall decide the suit without being influenced by the impugned order or the order passed by this Court restraining the Corporation from taking coercive steps.

5 In the result, appeal is disposed of in aforesaid terms along with applications therein.

(SANDEEP K. SHINDE, J.)