

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 457 OF 2022
WITH
INTERIM APPLICATION NO. 2938 OF 2022
IN
APPEAL FROM ORDER NO. 457 OF 2022**

Bharat Brahmadutta Singh Thakur .. Appellant

Versus

The Municipal Corporation of Greater .. Respondent
Mumbai

...

Mr. Pradeep Thorat with Bipin Joshi i/b Chandra Naik for the appellant.

Mr.Dharmesh Vyas with Om Suryavanshi for respondent MCGM.

Mr.Navneet Jadhav (A.E.B& F) 'D'Ward.

CORAM: BHARATI DANGRE, J.

DATED : 2nd MAY 2022

P.C:-

1 The present Appeal deserve to be disposed off in the wake of it's peculiar facts.

The appellant running it's avocation in the name and style as "Indiana Bar and Restaurant" Haji Ali Naka, Heera Panna Shopping Centre, Tardeo, Mumbai, is aggrieved by the rejection

Tilak

of his Notice of Motion in L.C. Suit No.1700/2010. The plaintiff claim that the suit premises exists prior to 1/4/1962 i.e. pre-datum line along with the mezzanine floors and even at times, permission was sought for repairing of the mezzanine floor which was granted by the Corporation.

In the said Suit, the notice issued by the Corporation u/s.351 of the Mumbai Municipal Corporation Act was subjected to challenge.

2 On an application for temporary injunction, restraining the Corporation from taking any action against the unauthorized structure, depicting in the notice and covering of open passage with B.M. Walls and I-Sections M.S. Girders with ladi Coba slab with fiber sheet and unauthorized construction of store room with b.m. Walls and ladi coba slab as well as wooden cubical particles, an injunction was sought.

3 The said application came to be rejected by recording that there is no convincing material brought on record to accept that the specific notice structure existed prior to the pre-datum line or that the same has been sanctioned or authorized by competent authority of MCGM.

Mr.Thorat, the learned counsel for the appellant would submit that the wooden cubical partition wall is not authorized but it has it's existence prior to 1961 and in fact, during the pendency of the Suit, the old wooden cubical partition

wall was erased along with its doors. As far as common passage is concerned, it is submitted that it is used as an access by all the occupants of the suit property, since considerable time and the position as such, is continued for more than 12 years.

4 In any case, it is stated that ad-interim order was granted by the trial Court in the Suit on 23/7/2010 and 9/8/2010 which was continued till dismissal of Notice of Motion No.13/4/2021. Apart from this, even this Court on 13/4/2021, has recorded to the aforesaid effect and continued and ad-interim protection.

The convenience of the parties and interest of justice demand that the Suit itself shall be finally adjudicated, and it is informed that on 27/6/2022 it is scheduled for evidence. Ultimately, while determining the matter on merits, the Court will have to make its Prima facie observation good, while refusing the injunction, on the evidence being brought before it on record by the contesting parties.

Since the position, as above continue, for more than a decade, the City Civil Court is requested to culminate the proceedings in L.C. Suit No.1700/2010 within a period of six months from today, and in any case, on or before 31/12/2022.

The ad-interim order granted in favour of the appellant in the Suit and which is continued from time to time, shall be continued till its final adjudication.

Appeal is disposed off.

In view of the disposal of the Appeal, Interim Application No.2938/2022 do not survive and is also disposed off.

(SMT. BHARATI DANGRE, J.)