

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

***APPEAL FROM ORDER NO.416 OF 2019
WITH
CIVIL APPLICATION NO.492 OF 2019***

Avinash Jaywant Shastri ...Appellant

Vs

Municipal Corporation of Gr. Mumbai
and Anr.

...Respondents

...

Mr. S.H.Bohra for the Appellant/Applicant.
Mr. R.Y.Sirsikar for Respondent/Corporation.

CORAM : SANDEEP K. SHINDE J.
DATE : APRIL 4, 2022.

P.C. :

Appellant is in possession of Shop Nos.5 and 6, as a tenant in Building No.355/37, of which, Allana Settlement Trust are land-lords/Trustees (Hereinafter called 'Said Shops'). Plaintiff was carrying on the business of vending cold-drinks. Later, he started, using it as 'snacks and bar'. It appears, pursuant to the directions issued by this Court in Writ Petition No.2337 of 2011, Corporation inspected shops in Building No.355/37, including shop nos.5 and 6 to verify, allegation of unauthorised extension of shop premises. The

report is at Page No.29. Inspecting team found, unauthorised extension of Shops on the rear side, in all admeasuring 0.9 mtrs. X 6.5 mtrs. To ascertain, whether extension was authorised or unauthorised, Assistant Engineer (B&F) Ward requested Executive Engineer to forward the approved building plan of Building No.355/37, firstly, in January, 2013 and thereafter on 11th October, 2013. Admittedly, Executive Engineer has not forwarded building plans to the Assistant Engineer. In spite of this fact, on 18th November, 2013, notice was issued under Section 351 of the Mumbai Municipal Corporation, 1888 concerning said shops, alleging unauthorised extension on its rear side. Whereupon, validity of the notice was challenged by the appellant in the suit. Pending suit, the learned Judge, City Civil Court, declined to protect the suit construction i.e. extension on rear side of shops, on the ground that the plaintiff could not produce the building permission to justify the extension. That order is under challenge in this Appeal From Order. Pending appeal, on 20th May, 2019, this Court extended interim protection, that was granted on 15th December, 2014 by the trial Court, which is in force till date. The learned counsel appearing for

the appellant, on instructions, submitted that the trial in the suit has commenced, in-as-much as trial Court has framed the issues. The learned counsel, therefore, argued that let, the interim protection granted on 15th December, 2014 be continued, till the conclusion of the trial.

2 Heard learned counsel for the Parties.

3 Communication dated, 11th October, 2013 addressed by the Assistant Engineer to the Executive Engineer (At Page 27 of the paper-book) implies, that in spite of diligent search to trace approved building plans, it could not be traced and, therefore, it could not be ascertained, as to whether extension on rear side of shops was authorised or unauthorised. In any case, the Corporation has not produced the approved building plans even before me. Moreover, it appears, the Corporation had also not issued notice to the land-lords-trustees. Indisputably, protection granted from demolition of suit structure is in force since December, 2014. In that view of the matter, it would be expedient if the trial Court concludes the trial

expeditiously and preferably before 31st March, 2023. However, till then, interim protection granted and continued by this Court on 20th May, 2019 shall continue to operate. It is clarified that the trial Court shall decide the suit on its' own merits without being influenced by the impugned order or the order passed by this Court. Appeal is allowed and disposed of in aforesaid terms along with applications therein.

(SANDEEP K. SHINDE, J.)