

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

**APPEAL FROM ORDER NO. 789 OF 2022
WITH
INTERIM APPLICATION NO. 17118 OF 2022**

Mr. Devilal Ratilal Joshi ...Appellant
V/s.

The Municipal Corporation of
Greater Mumbai ...Respondent

Mr. Rohan Savant i/b. Arun Sapkal and Co., for the Appellant.
Mr. R. Y. Sirsikar, for the Respondent / MCGM.

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CORAM : C.V. BHADANG, J.

DATE : 5 AUGUST 2022

P.C.

. The challenge in this appeal is to the order dated 25 July 2022 by which the learned City Civil Court has dismissed the Notice of Motion No. 3087/2016 filed by the Appellant – Plaintiff in L.C. Suit No. 1834 of 2016.

2. I have heard the learned counsel for the Appellant and the learned counsel appearing for the Respondent – MCGM. Perused record.

3. This is a third round of litigation between the parties in respect of the alleged unauthorised construction of a mezzanine floor in respect of which the Respondent – Corporation had issued a notice under Section 351 of Mumbai Municipal Corporation Act, 1988, in the year 2005. The second notice came to be issued somewhere on 8 June 2016 which was challenged by the Appellant in a suit in which the Corporation was directed to reconsider the matter and pass a reasoned order. Subsequent to this, the Corporation by a reasoned order dated 9 July 2016 has refused to accept the contention on behalf of the Appellant. The Petitioner has challenged the same in L.C. Suit No.1834/2016 in which the notice of motion was taken out seeking injunction restraining the Respondent – Corporation from demolishing the structure. A contention was raised on behalf of the Petitioner that the mezzanine floor constructed prior to 15 August 1997 are tolerable in view of circular of the Corporation dated 6 July 1998. It was contended that the mezzanine floor is constructed prior to 15 August 1997.

4. The trial Court has considered this aspect and found that the Petitioner has not produced any documents or sanctioned plan to show that the mezzanine floor was constructed prior to 15 August 1997 and in that view of the matter has refused to grant injunction.

5. The learned counsel for the Appellant has strenuously urged that the structure is in existence at least since the year 1987 when a agreement to sale came to be executed. He submitted that the Petitioner may be granted some time to produce the sanctioned plan.

6. In my considered view, none of the contentions can be accepted at this distance of time. The agreement to sale dated 12 March 1987 nowhere makes a reference to any mezzanine floor. The reliance placed on the said agreement to sale is misplaced. Equally misplaced is the reliance on circular dated 6 July 1998 in as much as the Petitioner has failed to produce the sanctioned plan or any material to show that the mezzanine floor was constructed prior to 15 August 1997. As noticed earlier, the dispute relates back to the year 2005 and for 17 long years, the Petitioner has failed to produce any sanctioned plan. No such sanctioned plan is produced before the learned trial Court. Thus, I do not find that the impugned order suffers from any infirmity. The appeal is without any merit and is accordingly dismissed. Pending civil applications are also disposed of.

6. The learned counsel for the Appellant, at this stage submits that the Appellant will file an application for regularisation. This Court restrain from expressing any opinion in the matter of regularisation.

C.V. BHADANG, J.