

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

APPEAL FROM ORDER NO.849 OF 2022
WITH
INTERIM APPLICATION NO.17712 OF 2022
IN
APPEAL FROM ORDER NO.849 OF 2022

Mohd. Ahsan Safat Khan .. Appellant.
v/s.
The Municipal Corporation of
Greater Bombay & Others .. Respondents.

Mr. J. S. Yadav, for the Appellant.
Mr. R. Y. Sirsikar, for Respondent No.1-MCGM.

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CORAM:- M. S. KARNIK,J.
DATE :- 22nd SEPTEMBER, 2022.

P. C.:

Heard the learned Counsel for the Appellant.

2 This Appeal from Order challenges the order dated 14th October, 2021 passed by the Trial Court in Notice of Motion No.2341 of 2021. The Trial Court made the Notice of Motion absolute in terms of prayer clause (b). The prayer clause (a) was not granted.

3 Being aggrieved by the order passed by the Trial Court not granting interim relief to the Appellant/ Plaintiff in terms of prayer clause (a) of the Notice of Motion, the present Appeal from Order is filed. The learned Counsel for the Appellant submits that, the Trial Court

has proceeded on an erroneous premise that the Appellant seeks direction to the Corporation to take action against the Bakery in question. He submits that, the purport of prayer clause (a) was not seeking direction to the Corporation but the prayer clause (a) was really seeking restraint on the Defendant No.2, his servants, officers and/or any persons claiming by through or under them from running illegal and unauthorized bakery in the suit premises.

4 During the pendency of the Appeal, learned Counsel for the Appellant points out that, in terms of the leave granted by the Trial Court, the Court Commissioner visited the suit premises and has submitted a report. The report is already filed. In view of the subsequent events, in my opinion, it would be appropriate for the Appellant to file a fresh Notice of Motion before the Trial Court, seeking reliefs in terms of prayer clause (a) in Notice of Motion No.2341 of 2021. Though the Trial Court has refused to grant the reliefs in terms of prayer clause (a), now that the Court Commissioner's report is on record, it would be in the interest of justice that if the Appellant is seeking to restrain the Defendant No.2 from running bakery and not insisting the Corporation to take action against the bakery in the pending suit, the Trial Court may consider the reliefs claimed in the fresh Notice of Motion, if filed, without being influenced by any observations made in the impugned order or the one passed today by me.

5 Appeal from Order is disposed of.

(M.S.KARNIK, J.)