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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO.756 OF 2022
IN
APPEAL FROM ORDER (ST) NO.24499 OF 2021

Zaibunnisa Mohd. Yakub Khan .. Applicant

Versus

M/s. Sayba Home Makers through .. Respondents
Partners & Ors.

...

Mr.Sagar Batavia h/f Mr.Angad Giri for the
Applicant/Appellant.

Mr.Bipin Joshi for the Respondent No.1.

Mr.Dharmesh Vyas with Mr.Om Suryavanshi for the
Respondent Nos.2 and 3-MCGM.

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CORAM: BHARATI DANGRE, J.

DATED : 29th MARCH, 2022

P.C:-

1. On hearing the learned counsel for the appellant, the delay in institution of the appeal, being of 30 days, deserves to be condoned and it is accordingly condoned. Interim Application No.756 of 2022 is allowed in terms of prayer clause (a).

2. With the assistance of the learned counsel appearing for the parties, I have perused the impugned order passed by the City Civil Court refusing ad-interim relief in terms of the draft

Notice of Motion filed in L.C.Suit (St) No.7981 of 2021. The draft Notice of Motion sought a restraint order against the defendants from granting TDR or acquiring the suit property till disposal of the suit, since the plaintiff claimed that she has right/interest in the suit property, but defendant No.1 has preferred an application to the MCGM to acquire the suit property.

Recording that till date, no order is passed by the MCGM acquiring the land or conferring any TDR and by further recording that MCGM has not taken any decision on the proposal of defendant No.1, it is observed that the Notice of Motion was lacking any cause of action.

The learned Judge, therefore, recorded that Notice of Motion itself is premature and ad-interim relief was rejected, with liberty being granted to the defendants to file reply to the Notice of Motion.

3. The reading of the order makes it amply clear that the apprehension expressed by the plaintiff in the draft Notice of Motion is unfounded and the learned Judge has rightly refused to entertain the same. Since the Notice of Motion is still pending, it shall be adjudicated by the learned Judge, upon considering the reply filed by the respondent No.1 and the MCGM.

The impugned order does not warrant any interference and upholding the same, the appeal is dismissed.

(SMT. BHARATI DANGRE, J.)