

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 96 OF 2019
WITH
CIVIL APPLICATION NO. 127 OF 2019
IN
APPEAL FROM ORDER NO. 96 OF 2019

Ms. Anima Gopaldas Mehta @

Mrs. Anima Manish Sehgal ...Appellant

V/s.

The Executive Engineer Officer

(G/ North Ward), MHADA and Anr. ...Respondents

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Ms. Kranti Anand a/w. Ms. Vaishnavi Mudras i/b. Mr. Sachin
Mhatre, for the Appellant.

Ms. Kalpana Trivedi a/w. Mr. Shreenath Trivedi, for the
Respondent No.2

CORAM : C.V. BHADANG, J.

DATE : 28 JULY 2022

P.C.

. Heard learned counsel for the parties.

2. The challenge in this appeal is to the order dated 3
November 2018 passed by the learned City Civil Court, Greater

Mumbai in Draft Notice of Motion in S.C. Suit (lodging) No.14930/2018. By the impugned order, the City Civil Court has refused to grant ad-interim injunction in favour of the Appellant / Plaintiff. The Appellant has sought declaration and injunction restraining the Respondent / Maharashtra Housing and Area Development Authority (MHADA) from evicting the Appellant from the suit premises, in pursuance of the notice dated 9 October 2018, issued under Section 95 -A(3) of the MHADA Act.

3. A perusal of the order dated 3 November 2018, shows that the City Civil Court, has placing reliance on Section 71 of the MHADA Act, which contains a bar of jurisdiction of Civil Court, has found that no ad-interim relief can be granted. Indisputably, the notice of motion is still pending before the City Civil Court.

4. The learned counsel for the Appellant submitted that this Court had granted ad-interim relief on 5 November 2018 which has been continued from time to time and is operating till today. The learned counsel has pointed out that in pursuance of the order dated 5 November 2018, an affidavit has been filed which is dated 14 November 2018. It is submitted that subsequent to the passing of the impugned order, the Appellant has also obtained letters of administration in respect of the said flat. She therefore submitted that it would be appropriate if the City Civil Court decides the notice of motion expeditiously.

5. None appears for the Respondent No.1 / MHADA.

6. The learned counsel for the Respondent No.2 submitted that in the application for letters of administration, the Respondent No.2 was not made a party and the said order is obtained behind the back of the Respondent. Secondly, it is submitted that even the order dated 5 November 2018 is an ex parte ad-interim order and at that stage, the Respondent No.2 has not been heard. The learned counsel, however, in all fairness, did not dispute that till today the Respondent No.2 has not filed any application for rescinding the order granting letters of administration. She submitted that the Respondent No.2 is contemplating to file such application. It is submitted that the Respondent No.2 is yet to file reply to the notice of motion before the City Civil Court. It is pointed out that even the Respondent No.1 / MHADA has also not filed reply.

7. Considering the over all circumstances and the fact that the interim protection is operating since 5 November 2018, I find that it would be appropriate that City Civil Court takes up the notice of motion expeditiously. The parties can raise all their contentions available to them both in law and on facts before the City Civil Court. In that view of the matter, the appeal is disposed of in the following terms.

ORDER

(i) It would be open to the Respondent No.1

MHADA as well as Respondent No.2 to file reply to the notice of motion, if not already filed, within a period of three weeks' from today.

(ii) It would be open to the Appellant / Plaintiff to file rejoinder, if any, within a period of two weeks' thereafter.

(iii) The City Civil Court shall hear and decide the notice of motion as expeditiously as possible and preferably on or before 31 October 2022.

(iv) Ad-interim relief granted by order dated 5 November 2018 shall continue to operate during the pendency of the notice of motion.

(v) The rival contentions of the parties, on merits, are left open.

In the circumstances, there shall be no order as to costs.

C.V. BHADANG, J.