

Sayali Upasani

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

APPEAL FROM ORDER NO.49 OF 2023

The Bandra Holy Family Hospital society ...Appellant
through its Treasurer and Trustee

Vs.

Rajaram Ramprasad Tilak @ Dhobi and ...Respondents
Others

Mr. S. C. Naidu, Mr. Manoj Gujar a/w T. R. Yadav, Suresh
Naidu and Pradeepkumar P. i/b C. R. Naidu and Co., for
Appellant.

Ms. Smita Tondwalkar, for MCGM.

CORAM:- N. J. JAMADAR, J.

DATED:- 28th JUNE, 2023

PC:-

- 1) Heard the learned Counsel for the parties.
- 2) The challenge in this Appeal is to an ad-interim order dated 29th November, 2022, passed by the learned Judge, City Civil Court in Draft Notice of Motion No.49 of 2023 in L.C. Suit No. 2747 of 2022, whereby the learned Judge was persuaded to grant ad-interim relief thereby restraining the respondent Nos.2 to 4 – defendant Nos.1 to 3, from taking action pursuant

to notice under Section 351 of the Mumbai Municipal Corporation Act, 1888 ("the Act, 1888") and the speaking order passed by the Designated Officer dated 9th November, 2022, till the filing of the reply to the Notice of Motion.

3) The appellant, who is not impleaded as a party defendant to the suit and claims to be the owner of the premises where the unauthorised development has been carried out and at whose instance the impugned notice came to be issued, has come in Appeal.

4) Mr. Naidu, the learned Counsel for the appellant, submitted that despite an order passed by this Court to implead the appellant-landlord as a party to the proceedings, which the plaintiff-respondent No. 1 might initiate, the appellant was not deliberately impleaded as a party and the impugned order was obtained. Objection to the tenability of the suit on account of bar of jurisdiction has not been delved into by the trial Court. Nor the Chamber Summons No. 587 of 2023 taken out by the appellant to implead him as a party defendant to the suit has been decided.

5) From the perusal of the impugned order, it appears that the fact that in an earlier notice under Section 351 of the Act,

1888, the structure, now sought to be proceeded against was not shown as an unauthorised structure, weighed with the learned Judge. Mr. Naidu submitted that the unauthorised structure i.e. first floor of the existing structure, though then in existence was not visible and, therefore, in the earlier notice reference to the structure, now sought to be proceeded against, was not made.

6) The learned Judge, City Civil Court, considered it appropriate to provide opportunity to the defendant Nos. 1 to 3 to file reply and protect the plaintiff at an ad-interim stage. In the face of the material on record, at this stage, there is no propriety in interfering with an ad-interim order of the present nature.

7) The grievance of the landlord, however, deserves to be adequately addressed.

8) Let the learned Judge, City Civil Court, be requested to hear and decide the Chamber Summons taken out by the appellant within a period of four weeks.

9) The learned Judge shall provide an opportunity to the defendants and the appellant, if impleaded as defendant, to file affidavits-in-reply in opposition to the Notice of Motion and

such reply be filed within a period of two weeks from the decision in the Chamber Summons.

10) The learned Judge, City Civil Court, is requested to hear and finally decide the instant Notice of Motion as expeditiously as possible and preferably within a period of three months from the date of filing of affidavits-in-reply by the appellants, if impleaded as a party defendant.

11) In the meanwhile, ad-interim relief, granted by the learned Judge, City Civil Court, shall continue to operate till the decision of the Notice of Motion.

12) Subject to aforesaid directions, the Appeal stands disposed.

13) It is clarified that this Court has not entered into the merits of the matter.

14) All contentions of all the parties are kept open for consideration.

[N. J. JAMADAR, J.]