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AO 11 of 2023

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER NO. 11 OF 2023
WITH
INTERIM APPLICATION NO. 111 OF 2023
in
APPEAL FROM ORDER NO. 11 OF 2023**

Sohrat Ali Qureshi S/o. Dost Mohammed ... Appellant
Versus
The Municipal Corporation of Greater ... Respondent
Bombay

Mr. V. T. Dubey, i/b V. T. Dubey & Associates for the Appellant.
Mr. R. Y. Sirsikar, for Respondent No. 1-MCGM.

CORAM: G. S. KULKARNI, J.
DATED: JANUARY 06, 2023

PC.

1. Heard learned Counsel for the appellant. This appeal is directed against an order dated 29 December 2022 passed by the learned Judge, City Civil Court at Bombay, whereby an ad-interim relief on the appellant's draft notice of motion has been rejected. In the suit in question, the appellant had assailed an action resorted by the Municipal Corporation against the appellant under Section 351 of the Mumbai Municipal Corporation Act, 1888 (for short "the **MMC Act**"). A notice dated 31 December 2019 was issued to the appellant alleging that the portion of the appellant's premises namely vertical extension as put up by using brick masonry wall, M.S.Angle, Ladi Coba and A.C. Sheet roof as shown in sketch and the measurement as set out in the impugned

notice, was unauthorised. The appellant was called upon to show cause as to why the said unauthorised structure shall not be removed. The appellant filed his response to the said notice by submitting his reply dated 8 January 2020. A copy of the said reply is annexed to the paperbook at “Exhibit H” (page 45).

2. The proceedings were heard yesterday for some time and they were adjourned for today to enable the learned Counsel for the appellant to produce the original of his reply, so as to verify the actual receipt of the said reply by the concerned department of the municipal corporation. Accordingly, the original reply has been produced before the Court. It has a stamp of receipt by the Assistant Municipal Commissioner, “T” Ward dated 8 January 2020 with Inward NO.22523. It is also clear that the same is a reply of the appellant to the notice dated 31 December 2019 issued under Section 351 of the MMC Act. It appears that a speaking order on the notice dated 31 December 2019 is passed almost after three years and in the process the reply which was filed by the appellant has not been taken into consideration by the designated officer of the Municipal Corporation, as there is no reference whatsoever to the reply and/or any justification for not considering the reply by the appellant to the impugned notice. In fact, surprisingly the speaking order dated 24 December 2022 observes that in response to the notice, the appellant “*neither replied nor produced any authentic documents to prove the authorization of notice structure*”. Hence, the designated officer reached to a conclusion that the objectionable construction is unauthorized.

3. In the aforesaid circumstances, in my opinion, it is in the interest

of justice that the appellant would be required to be heard and his reply dated 8 January 2020 as submitted and duly received by the Municipal Corporation should be taken into consideration in passing fresh orders.

4. For all these reasons, the speaking order dated 24 December 2022 cannot be sustained and is required to be held to be illegal. Learned Counsel for the Municipal Corporation would also not be in a position to justify such basic infirmity in the impugned order.

5. For the above reasons, the suit itself would be required to be disposed of, as readily agreed by the learned Counsel for the appellant. The appeal is accordingly disposed of by the following order:-

ORDER

(i) The speaking order dated 24 December 2022 having Reference No.102609 (page 46 of the appeal memo) issued by the Designated Officer is set aside. The Designated Officer of the Municipal Corporation shall consider the appellant's reply dated 8 January 2020 and after granting an opportunity of hearing to the appellant, pass a fresh order in accordance with law.

(ii) The appellant is directed to remain present before the Designated Officer on 13 January 2023 at 2.30 p.m. The appellant shall produce all the relevant material before the Designated Officer on such date.

(iii) The Designated Officer shall grant personal hearing to the appellant or his representative and pass a speaking order, within a period of one week thereafter.

(iv) Learned Advocate for the Municipal Corporation shall forward a

copy of this order to the Law Officer of the Municipal Corporation and also to the Designated Officer of the concerned Ward for appropriate compliance.

(v) The suit in question being Long Cause Suit (st) No.14601 of 2022 would also not survive, in view of the above directions. The same stands disposed of. The intimation of disposal of the suit be forwarded by the Office, to the Registry of the City Civil Court at Mumbai.

6. The appeal is accordingly disposed of in the above terms. No costs.

7. In view of disposal of the appeal, pending Interim Application would not survive. It is disposed of.

(G. S. KULKARNI, J)