

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 111 OF 2023
WITH
INTERIM APPLICATION NO. 1446 OF 2023

M/s. Shree Sukhsagar Hospitality Services, through ... Appellant/
Shiv Chandra S. Shetty, through CA Vinod N. Mange Applicant

Versus

The Municipal Corporation of Greater Mumbai & Ors. ... Respondents

Mr. Jagdish N. Jayale for the appellant/applicant.

Ms. Smita Tondwalkar for the respondents.

CORAM: G. S. KULKARNI, J.

DATED: 14 February, 2023

P.C.

- 1.** Not on board. Upon mentioning of urgency, taken on board on a praecipe as moved on behalf of the appellant.
- 2.** Heard Mr. Jayale, learned counsel for the appellant/plaintiff and Ms. Tondwalkar, learned counsel for the Municipal Corporation.
- 3.** The appellant assails an order dated 30 January, 2023 passed by the learned Judge of the City Civil Court, Borivali Division, Dindoshi in Notice of Motion No. 4114 of 2022 in L.C. Suit No. 2906 of 2022 whereby the said Notice of Motion as filed by the appellant has been dismissed by a well reasoned order.
- 4.** The genesis of the proceedings before the trial Court in the suit as filed by the appellant/plaintiff is the action as resorted by the Municipal Corporation

against the appellant under section 55 of the Maharashtra Regional Town Planning Act, 1966 for removal of an unauthorized erection of temporary shed using M.S. Angles and plastic sheet ademeasuring 18.28 M X 7.70 M X 4.2 M (ht.) and below it an unauthorized raising of flooring in front of its hotel/restaurant in the common passage of the premises of the Cooperative Society. A reply to such notice of the Municipal Corporation was submitted by the appellant on 17 October, 2022 which was received by the Municipal Corporation on 19 October, 2022. Perusal of the reply indicates that no documents whatsoever were submitted by the appellant/ plaintiff to show that any permission or sanction was granted by the Municipal Corporation to construct the objected structure and/or to show that the objected structure was legal or authorised, which was in fact a shed or an extension to the restaurant conducted by the appellant used for commercial purposes.

5. Learned counsel for the appellant has fairly submitted that there was a complaint in regard to the impugned unauthorized construction by the Co-operative Society which houses the appellant/plaintiff premises. The designated officer of the Municipal Corporation after hearing the appellant/plaintiff and after considering all the documents has passed reasoned speaking order dated 2 December, 2022 holding that the appellant/plaintiff could not support its case for the objected structure to be in any manner authorized.

6. Learned counsel for the appellant in assailing the impugned order has made submissions that the objected structure is in the nature of a temporary shed. He submits that no prejudice would be caused to anyone by the height of the flooring being raised and the objected premises being used for the benefit of the appellant/plaintiff for the business carried out by the appellant/plaintiff in the name and style of “Shree Sukh Sagar Restaurant”.

7. A perusal of the impugned order would show that the learned trial Judge has considered the case of the appellant on all aspects and has observed that the appellant/plaintiff failed to make out a prima facie case that the suit shed was authorizedly constructed and/or the same was sanctioned or permitted to be constructed by the Municipal Corporation including the renovation/putting up of a raised flooring below it.

8. A significant issue is required to be noted, namely, that the appellant/plaintiff is a mere licensee of the premises. A copy of the leave and licence Agreement entered between the landlord and the appellant/plaintiff is on record. Thus, the appellant in no manner was permitted to undertake such extension, as objected by the notice in question issued by the Municipal Corporation. As a licensee, the appellant had limited rights as seen from the contents of the leave and licence Agreement, more particularly as set out in paragraphs 6.6 and 6.7 of the leave and licence Agreement. However, it clearly

appears that the appellant had exceeded its rights as a licensee by putting up the unauthorized construction subject matter of the Municipal Corporation's notice. As a licensee, there is no legal right accrued to the appellant to make any unauthorized additions/extension in the licenced premises. If at all any right to put up any construction is to accrue, it can only be with the owner of the building, which is the Cooperative Society and the beneficial member, namely, the appellant's landlord on being permitted by the Society and as may be permissible in law. They appear to be not aggrieved by such action of the Municipal Corporation, as they have not adopted any proceedings.

9. For the aforesaid reasons, no interference is called for in the findings recorded by the learned trial Judge, which are completely based on record. The appeal is without merit, it is accordingly rejected.

10. At this stage, learned counsel for the appellant prays for stay on removal of the unauthorized construction. In the facts of the case, the request for stay is rejected.

11. In view of disposal of Appeal from Order, Interim Application does not survive and the same is accordingly disposed of.

G. S. KULKARNI, J