

Sayali Upasani

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

**APPEAL FROM ORDER NO.323 OF 2023
WITH
INTERIM APPLICATION NO. 4004 OF 2023**

Dimple Arcade Premises Co-Op. Soc. Ltd ...Appellant
through Chairman and Authorised Person
Mr. Harshil Shah

Vs.

Harmesh Singh Chadha S/o Narinder ...Respondents
Singh Chadha and Others

Mr. Harideep Singh, for Appellant.

Mr. Anuuj N. Rarula a/w Ms. Meena Bhatta, i/b M/s.
Jhangiani, Narula and Associates, for Respondent No. 1.

CORAM:- N. J. JAMADAR, J.

DATED:- 28th JUNE, 2023

ORDER:-

- 1) Heard the learned Counsel for parties.
- 2) The challenge in this Appeal is to an order dated 18th January, 2023, passed by the learned Judge, City Civil Court, in Notice of Motion No. 1150 of 2013 in L. C. Suit No. 1103 of 2013, whereby the Notice of Motion was made absolute

restraining the respondent No. 1-Corporation from executing a notice issued under Section 351 of the Mumbai Municipal Corporation Act, 1888 (“the Act, 1888”) on 24th December, 2022, till the decision of the suit.

3) The defendant No. 2- Society has preferred this Appeal being aggrieved by the order restraining the Municipal Corporation from taking action on the basis of the said notice.

4) Evidently, the notice was issued in the year 2012. The suit came to be instituted in the year 2013 and the interim protection has been in operation since then till the Notice of Motion came to be made absolute by the impugned order.

5) The sheer length of time, for which the interim protection has been in operation, necessitates that the suit itself be heard and decided on its own merits.

6) In any event, in the impugned order, the learned Judge City Civil Court, has ascribed reasons which, in the view of the learned Judge, warrant determination of the issues at trial. Thus, there is no propriety in entertaining this Appeal, at this length of time.

- 7) A grievance was sought to be made on behalf of the defendant No. 2 that the suit is not being proceeded with expeditiously.
- 8) The learned Counsel for the respondent No. 1-plaintiff undertakes to file affidavit of evidence within a period of three weeks.
- 9) Let affidavit of evidence of the respondent No. 1- plaintiff be filed within a period of three weeks and the learned Judge, City Civil Court, make an endeavor to decide the suit as expeditiously as possible and preferably within a period of one year from the date of filing of the affidavit in lieu of examination- in-chief.
- 10) With the aforesaid directions, the Appeal stands disposed.
- 11) In view of disposal of the Appeal, the Interim Application also stands disposed.

[N. J. JAMADAR, J.]