

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

**APPEAL FROM ORDER NO. 222 OF 2023
WITH
INTERIM APPLICATION NO. 3165 OF 2023**

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SUBHASH
KULKARNI

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Shobhnath Bhagwatiprasad Tiwari ...Appellant
Versus
Municipal Corporation of Greater Mumbai ...Respondent

Mr. Induprakash Tripathi, a/w Bhagyashri Jawas, i/b C. K.
Tripathi, for the Appellant.
Ms. Smita Tondwalkar, for the Respondent – MCGM.
Mr. Kiran Jadhav, J. E. (B&F), ‘T’ Ward, present.

CORAM: N. J. JAMADAR, J.
DATED : 12th JULY, 2023

Order:-

1. The challenge in this appeal is to an order dated 13th March, 2023 passed by the learned Judge, City Civil Court, Greater Mumbai, in Notice of Motion No.4172 of 2022 in LC Suit No.2467 of 2022, whereby the Notice of Motion taken out by the appellant – plaintiff to restrain the defendant – Corporation from acting upon the notice dated 22nd October, 2022, issued under Section 354 of the Mumbai Municipal Corporation Act, 1888 (“the Act, 1888”), with reference to an earlier notice dated 14th July, 2006, came to be dismissed. The plaintiff claims to be a tenant of the shop premises situated at Nenbai Niwas, Mulund

(West) (“the suit shop”). The plaintiff has been in occupation of the suit shop since the year 1966 and has all the requisite permissions and licences to run the said shop “Shobhnath and Sons”. It is assessed to tax as well. The suit shop is located at a distance from Nenbai Niwas. The said building having been declared dilapidated was eventually demolished. No notice qua the suit shop was ever issued.

2. The plaintiff avers at the instance of the landlord, the defendant – Corporation addressed a notice on 21st October, 2022 purportedly under Section 354 of the Act, 1888 and in continuation of the notice dated 14th July, 2006, which was issued in respect of the Nenbai Niwas building. A reply was given to the said notice on the very day. It was pointed out that the suit shop was not part of the building which had been demolished. The notice under Section 354 of the Act, 1888 did not govern the suit shop and in fact the plaintiff had instituted a suit in the Court of Small Causes as the landlord threatened to dispossess the plaintiff and in the said suit the Court of Small Causes had passed a *status quo* order. Yet, the defendant threatened to demolish the suit shop in pursuance of the aforesaid notices. The plaintiff was thus constrained to institute the suit and seek interim relief.

3. By the impugned order, the learned Judge, City Civil Court, was persuaded to dismiss the Notice of Motion opining, *inter alia*, that in the event the suit shop is demolished the rights of the plaintiff as a tenant thereof are safe-guarded under the provisions of the Maharashtra Rent Control Act and that the plaintiff himself has availed an efficacious remedy by instituting a suit in the Court of Small Causes and, therefore, the plaintiff was not entitled to the discretionary relief of temporary injunction in the instant suit. Being aggrieved, the plaintiff is in appeal.

4. I have heard Mr. Tripathi, the learned Counsel for the appellant and Ms. Tondwalkar, the learned Counsel for the respondent – Corporation.

5. Mr. Tripathi would urge that the notice under Section 354 of the Act, 1888, which was issued on 14th July, 2006 was not in respect of the suit shop. Inviting the attention of the Court to the said notice, wherein the reference was only to Nenbai Niwas, Mr. Tripathi submitted that the respondent – Corporation at the behest of the landlord, issued the impugned notice though the suit shop has never been declared to be a dilapidated and dangerous structure warranting immediate demolition. Mr. Tripathi also placed reliance on the measurement chart

prepared by the respondent – Corporation in respect of Nenbai Niwas building, which came to be demolished. The plan annexed to the affidavit dated 27th June, 2023 indicates that the suit shop is a stand alone structure and located away from Nenbai Niwas building, which came to be demolished. Mr. Tripathi also invited attention of the Court to the area statement prepared by the Municipal Corporation at the time of demolition of the Nenbai Niwas, wherein the suit shop does not find mention. It records the area in the occupation of six of the tenants and landlord.

6. *Prima facie*, the notice dated 14th July, 2006 does not refer to the suit shop either expressly or by implication. On the contrary, it seems that the said notice was primarily and specifically in respect of Nenbai Niwas. There is no material to indicate that in the intervening period till the impugned notice came to be issued, the suit shop was inspected and found to be in a dilapidated state warranting immediate demolition.

7. Ms. Tondwalkar, the learned Counsel for the Municipal Corporation, attempted to salvage the position by banking upon an area statement submitted on behalf of the occupants, which the plaintiff had also signed. I am afraid, the said statement can be construed as an acquiescence of the suit shop being a

dilapidated structure. Indisputably, there are disputes between the plaintiff and the landlord as regards the entitlement for permanent alternate accommodation and the other benefits. However, the suit instituted by the plaintiff in the Court of Small Causes to restrain the landlord from evicting the plaintiff from the suit shop cannot be construed as an efficacious alternate remedy where the Corporation proceeds to invoke the powers under Section 354 of the Act, 1888.

8. The respondent – Corporation would be required to justify its action under Section 354 of the Act, 1888 on the premise that the structure sought to be proceeded against is dilapidated and dangerous and warrants immediate demolition. The respondent – Corporation has, *prima facie*, failed to make out such case. Recourse to the notice dated 14th July, 2006 to sustain impugned action *prima facie* does not merit countenance as the said notice was in respect of Nenbai Niwas. There is overwhelming material to show a lawful possession of the plaintiff over the suit shop and that the suit shop is at a distance from the Nenbai Niwas building, which came to be demolished. Thus a strong *prima facie* case is made out by the plaintiff. In the event of denial of interim relief, the plaintiff would suffer irreparable loss.

9. The conspectus of the aforesaid consideration is that the City Civil Court did not correctly exercise the discretion and, therefore, it is required to be corrected in appeal. Hence, the appeal deserves to be allowed.

10. Thus, the following order.

: O R D E R :

- (i) The appeal stands allowed.
- (ii) Notice of Motion is made absolute in terms of prayer Clause (a).
- (iii) The learned Judge, City Civil Court, is requested to make an endeavour to decide the suit as expeditiously as possible.
- (iv) In view of the disposal of the appeal, interim application does not survive and stands disposed.
- (v) No costs.

[N. J. JAMADAR, J.]