



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.530 OF 2023
WITH
INTERIM APPLICATION NO.14277 OF 2023
IN
APPEAL FROM ORDER NO.530 OF 2023

Sulochana Jayanth Shetty
V/S

....Appellant/Applicant

Municipal Corporation of
Greater Mumbai & Anr.

....Respondents

...

Mr. Sagar G. Talekar for the Appellant/Applicant.

Ms. Smita Tondwalkar for Respondent-MCGM.

...

CORAM: SANDEEP V. MARNE, J.

DATE : AUGUST 21, 2023.

P.C.:

1 This Appeal is filed challenging order dated 23 February 2023 passed by the City Civil Court rejecting Appellant's Notice of Motion for grant of interim injunction against notice dated 20 September 2021 issued by the Respondent-Municipal Corporation for Greater Mumbai, under section 351 of the Mumbai Municipal Corporation Act (**the Act**).

2 Appellant runs a restaurant/hotel in the suit structure. It appears that there already existed a mezzanine floor admeasuring 60 square feet in the suit structure. Respondent-Municipal Corporation conducted inspection on receipt of a complaint and found that the total area of

mezzanine floor at the suit site was 129.72 square meters. Since an additional area admeasuring 69.72 square meters was found to have been erected at the suit site. Respondent-Municipal Corporation has issued notice dated September 2021 under section 351 of the Act for demolition of only the extended area of mezzanine floor. The City Civil Court has rejected the Notice of Motion No.481 of 2023 seeking grant of interim injunction.

3 I have heard the learned Counsel appearing for the Appellant. He would invite my attention to the plan prepared by the Bombay Housing and Area Development Board (**Board**) while repairing and reconstructing the building. He would submit that the said plan would show existence of the mezzanine floor at the suit site. Though the learned Counsel would fairly concede that the plan does not indicate the exact area of mezzanine floor, he would urge before me that the exact area of mezzanine floor in the plan is required to be verified from the office of the Board. He would submit that the entire area covered by notice is actually sanctioned in the said plan prepared by the Board.

4 I have considered the submissions canvassed by the learned Counsel for the Appellant. Perusal of the notice dated 20 September 2021 would indicate that the same is issued only in respect of area admeasuring 69.72 square meters. Thus, so far as the original mezzanine area of 60 square meters, it appears that Respondent-Municipal Corporation is not proposing to demolish the same. The learned Counsel

for the Appellant has not been able to produce any development permission on record by which the additional area of 69.72 square meters has been permitted to be erected as the suit site.

5 Reliance of the learned Counsel for the Appellant on the plan of the Housing Board is of little assistance to his case. Perusal of said plan would indicate that the same was prepared essentially to have an estimate for reconstruction of the building. The plan does indicate existence of mezzanine floor. However, the existence of mezzanine floor of original area of 60 square meters is not in dispute and the Respondent-Municipal Corporation is not in a proposing to take any action against the same. Since the learned Counsel for the Appellant is unable to produce any development permission for extension to the mezzanine floor (admeasuring 69.72 square meters) being granted, in my view, no case was made out for grant of any interim injunction in respect of the impugned notice issued by the Respondent-Municipal Corporation.

6 The City Civil Court has not committed any error while passing the impugned order. The Appeal is devoid of merits and is dismissed without any orders as to costs. In view of the disposal of the Appeal, the Interim Application also stands disposed of.

(SANDEEP V. MARNE, J.)