

Sayali Upasani

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

**APPEAL FROM ORDER NO. 145 OF 2021
WITH
INTERIM APPLICATION NO. 1569 OF 2021**

SAYALI
DEEPAK
UPASANI

Digitally signed by
SAYALI DEEPAK
UPASANI
Date: 2023.07.25
10:16:47 +0530

Hitesh Chandulal Saparia and Others ...Appellants

Vs.

The Municipal Corporation of Greater ...Respondents
Mumbai and Others

Mr. Vishal Kanade, a/w Ms. Janhavee Joshi i/b Mr. Mohan
B. Jadhav, for Appellants.

Mr. Mayur Khandeparkar a/w Mr. Vikranjit G. a/w Jigar
Shah i/b M/s. Makrand Gandhi and Co., for Respondent
No. 2.

Mr. Kalpesh Joshi, for Respondent No. 3.

Ms. Smita Tondwalkar, for MCGM- Respondent No. 1.

CORAM:- N. J. JAMADAR, J.

DATED:- 19th JULY, 2023

P.C.:-

- 1) Heard the learned Counsel for the parties.
- 2) This Appeal is directed against an order dated 29th
January, 2021, passed by the learned Judge, City Civil Court in
L.C. Suit No. 2161 of 2019, whereby the learned Judge, City

Civil Court declined to grant the interim relief and dismissed the Notice of Motion.

3) The substance of the appellants-plaintiffs case is that in respect of the suit premises initially a notice under Section 351 (1) of the Mumbai Municipal Corporation Act, 1888, ("the Act, 1888") was issued by the respondent No. 1- Corporation, which necessitated institution the suit. The respondent No. 2 – Landlord, taking undue advantage of another notice issued under Section 354 of the Act, 1888 in respect of Sadhana Building, which was a completely different adjoining structure, yet situated in the same precinct, demolished the suit premises as well while demolishing Sadhana Building.

4) The appellants-plaintiffs were thus constrained to seek amendment in the plaint and seeks reliefs in the Notice of Motion to restrain the defendant from carrying out further construction as well as to re-construct the suit premises, which was demolished.

5) By the impugned order, the learned Judge, City Civil Court declined to grant ad-interim relief as the learned Judge was of the view that the question as to whether the appellants-plaintiffs were the recognised tenants of the subject premises

and it was distinct and separate from Sadhana Building, which came to be demolished pursuant to under Section 354 of the Act, 1888, was a matter for trial and the appellants-plaintiffs were required to establish those facts at the trial.

6) Evidently, the questions raised in the Notice of Motion are rooted in facts. The issues as to whether the suit structure was distinct and separate from Sadhana Building, was it unlawfully demolished by the respondent No. 2 – Landlord in connivance with the respondent No. 1, and are plaintiffs entitled to reliefs including that of mandatory injunction warrant adjudication post recording of evidence. In the circumstances of the case, the learned Judge, City Civil Court does not seem to have committed any error in declining to exercise the discretion in favour of the appellants-plaintiff.

Mr. Kanade, the learned Counsel for the appellants, would urge that in view of the stand of the respondent No. 2 that a new building has already been constructed, occupation certificate obtained, and third party rights have been created, the appellants-plaintiffs would be presented with fait accompli.

7) It would be suffice to note, in the event, the Court ultimately comes to the conclusion that the suit premises was

unlawfully demolished and the appellants-plaintiffs were wrongfully ousted from the suit premises, the Civil Court has the power and can appropriately mould the relief so as to grant effective redressal.

8) Keeping all the issues open for consideration, the Appeal deserves to be disposed. However, having regard to the nature of the dispute, this Court considers it appropriate to request the trial Court to decide the suit as expeditiously as possible.

9) The Court is informed that the defendant No. 2 - Landlord has already filed the written statement.

10) Ms. Tondwalkar, the learned Counsel for the respondent No. 1 – Corporation, submits that the respondent- Corporation will file the written statement within a period of one month from today.

11) Let defendant No. 1 - Corporation file written statement within a period of one month from today, if the right of the defendant No. 1 to file the written statement has not been already foreclosed.

12) If the written statement, if any, is filed by the respondent No. 1, the trial Court is requested to expeditiously frame the issues and decide the suit as expeditiously as possible and

preferably within a period of one year from the date of the settlement of the issues.

13) The Appeal stands disposed.

14) No costs.

15) In view of disposal of the Appeal, the Interim Application also stands disposed.

[N. J. JAMADAR, J.]