

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.622 OF 2015

WITH

CIVIL APPLICATION NO.767 OF 2015

Adil Abdul Hamid Shaikh ... Appellant

Versus

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

Ms. Shraddha S. Vavhal, for the Appellant

Mr. Suresh Pakle with Mr. R. Y. Sirsikar, for the Respondent-MCGM

Mr. P. G. Lad with Ms. Shreya Shah, for MHADA.

CORAM: G. S. KULKARNI, J.

DATED: JANUARY 11, 2023

PC.

1. Heard learned Counsel for the appellant, learned Counsel for the respondent-municipal corporation and Mr. Lad, learned Counsel for MHADA. MHADA although is not a party, by an order dated 18 April 2015 passed by a co-ordinate Bench of this Court, was directed to appear in the present proceedings.

2. This appeal is directed against the judgment and order dated 26 March 2015 as passed by the learned Judge, City Civil Court, Bombay, whereby an ad-interim order on Notice of Motion No.1255 of 2015 taken out in L.C.Suit No.808 of 2015 has been rejected.

3. The subject matter of the suit pertains to an action initiated by the municipal corporation against the appellant/plaintiff by issuing a notice under Section 354A of the Mumbai Municipal Corporation Act (for short 'the MMC Act'). The appellant in the suit in question contended that he

is a tenant in respect of Room No.802 in Bldg.No.57/57A, Memonwada Road, Mumbai-400003, which is owned by one Kammu Yakkub Charitable Trust. According to the MHADA, the building in question is a cess building. It appears that as the building required repairs, the MHADA by a work order dated 1 October 2011 (“Exhibit C” at page 49) issued in favour of one M/s.H.S.Enterprises, Santacruz (W), Mumbai, a panel contractor, approved repairs to the said building to be undertaken by the said contractor. The repairs were required to be carried out within the time span of 12 months from the issuance of the work order.

4. Mr.Pakle, learned Counsel for the municipal corporation has contended that the municipal corporation had issued a notice under Section 354(A) the M.M.C. Act for the reason under the guise of repairs an unauthorised construction was undertaken by putting up additional floors and accordingly the 8th floor as occupied by the appellant came to be illegally constructed. It is his contention that accordingly, a notice dated 10 March 2015 under Section 354(A) of the M.M.C. Act was issued to the occupants and the owners for undertaking such illegal construction. It appears from the record that such notice was replied by the appellant by his Advocate’s letter dated 17 March 2015 in which the appellant submitted that the appellant was residing in the suit structure from the year 2011. He contended that the appellant was merely a tenant and therefore, he would not be in a position to prove the authorization of the subject structure. To support such contention what was produced and relied by the appellant was rent deposit receipts for 3 months rent receipts, electricity bills, etc. However, no document was placed for consideration of the municipal corporation to show that the structure in question was authorized either by the municipal corporation

or by the MHADA. It is on such premise, the notice of motion was heard for ad-interim reliefs. The learned trial Judge considering the materials on record, has observed that no case was made out for grant of any ad-interim relief and accordingly, rejected such prayer by the impugned order dated 26 March 2015.

5. On the above backdrop, the present appeal came to be filed on 17 April 2015. The appeal was moved before the Court on 18 April 2015 which appears to be the first date when the same was heard by the Court, when a co-ordinate Bench of this Court has passed the following order:

“1. Not on board. At the request of Advocate for the appellant, matter is taken on board for urgent orders.

2. This Appeal from Order is preferred by plaintiff challenging the order dated 26.03.2015 passed by Bombay City Civil Court at Bombay in Notice of Motion No.1255 of 2015 in L.C.Suit No.808 of 2015 declined to grant ad-interim relief.

3. The learned Counsel for the plaintiff submits that pursuant to the notice under Section 354-A of M.M.C. Act dated 10.03.2015, they submitted their reply to the Corporation on 17.03.2015, but corporation has not passed any reasoned order to that effect. He submits that the unauthorised construction shown by the Corporation in notice under Section 354-A of M.M.C. Act dated 10.03.2015 of which the repairs work was carried out by MHADA recently.

4. Considering this fact, the following order is passed:

ORDER

a) Office is directed to place the Appeal from Order on board on 23.04.2015 for admission.

b) Appellant to add MHADA as party respondent and serve copy of Appeal memo alongwith all annexures and Civil Application on or before 21.04.2015 and file affidavit of service to that effect.

c) Till next date parties are directed to maintain status quo as on today.”

(emphasis supplied)

6. As argued by Mr.Pakle, that by virtue of the above protection

which has continued to operate, the objected illegal structure in occupation of the appellant has continued to exist, which, in fact, would be required to be demolished/removed by following due process of law.

7. Learned Counsel for the appellant has submitted that the grievance of the appellant/plaintiff against the impugned order is that there is no speaking order passed by the municipal corporation on the notice issued by the municipal corporation under Section 354(A) of the MMC Act and the subject matter of suit.

8. In any event, on a perusal of the reply as submitted by the appellant/plaintiff to the Section 354(A) notice, it appears that there is hardly anything which could be considered by the municipal Corporation. There was no material as placed on record on behalf of the appellant before the Designated Officer of the municipal corporation showing that the structure occupied by the appellant in any manner was authorized. There was no construction permission or any sanctioned plan placed for consideration of the municipal corporation. Thus prima facie applying the well settled principles of law it was doubtful as to whether any prejudice was at all caused to the appellant.

9. Having heard learned Counsel for the parties and having perused the record, it is quite clear that the appeal has been preferred against an ad-interim order. The notice of motion itself is pending hearing. Mr. Pakle is not in a position to make a statement that the municipal corporation has filed its reply affidavit to the notice of motion. MHADA is not a party to the proceedings of the suit before the City Civil Court, Bombay. In these circumstances, by virtue of the ad-interim order passed by this Court, the municipal corporation has not taken any further action.

Considering such situation, in my opinion, it would be appropriate that pending Notice of Motion No.1255 of 2015 itself be taken up for hearing by the learned trial Judge. The municipal corporation is at liberty to place on record a reply affidavit within a period of three weeks from today, a copy of which be served on the appellant/plaintiff. The appellant/plaintiff may file a rejoinder affidavit, if so necessary. Learned Trial Judge shall hear the parties on notice of motion and decide the notice of motion as expeditiously as possible, in any event, on or before 15 March 2023. All contentions of the parties on the notice of motion as also on the suit, are expressly kept open.

10. The ad-interim protection as granted by this Court vide order dated 18 April 2015 shall continue to operate till the disposal of the notice of motion. However, continuation of such protection ought not to be presumed as an expression on merits of the rival contentions of the parties as also on any other permissible step which the municipal corporation can take against any unauthorised construction by following due process of law. All contentions of the parties in that regard are expressly kept open.

11. Disposed of in the above terms. No costs.

12. Parties are directed to co-operate in the early disposal of the notice of motion. In the event, the trial Judge is of the opinion that there is an attempt on the part of any of the parties to protract the proceedings, the learned trial Judge shall pass such appropriate orders.

(G. S. KULKARNI, J)