

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 455 OF 2023
WITH
INTERIM APPLICATION NO.12701 OF 2023

Mr. Cyril S/o. Augustine D'souza ...Appellant

Versus

Municipal Corporation of Greater Mumbai
Through Designated officer G/south Ward,
Mumbai. ...Respondents

...
Mr. Ashok M. Saraogi, for Appellant.
Mrs. Smita Tondwalkar, for Respondent.
...

CORAM : SANDEEP V. MARNE, J.
DATE : AUGUST 25, 2023.

P.C.:

1. By this Appeal Appellant challenges order dated 5 June 2023 passed by the City Civil Court by which ad-interim relief in draft Notice of Motion tendered in L.C. Suit (St.) No.5882 of 2022 is rejected. Plaintiff has instituted the suit challenging notice dated 9 May 2023 issued by the Municipal Corporation for Greater Mumbai under the provisions of Section 354(A) of the Mumbai Municipal Corporation Act, 1988. The notice is in respect of the following structure:

“ Schedule (Description of work):

Unauthorized construction of RCC Columns & Beams on existing ground floor structure adm. 12.33 m X 8.45 m having height 3.0 m at Room No. 126/C, Near Bhandarwada, K. B. Bhaye Marg, Worli Village, Worli Koliwada, Worli, Mumbai, Maharashtra 400 030, India.”

2. Appellant-Plaintiff filed reply to the notice on 18 May 2023.

After considering the reply, speaking order has been passed on 30 May 2023.

The City Civil Court has refused to grant ad-interim relief in favour of the Appellant-Plaintiff.

3. The learned Counsel appearing for Appellant-Plaintiff would submit that there is no dispute to the position that the suit structure is assessed prior to the datum line of 31 March 1961. He would invite my attention to Para 9 of the order of City Civil Court, in which this aspect is undisputed. He would further submit that the said assessment sheet would indicate that the structure consists of Ground plus First Floor and Attic Floor. That, Appellant-Plaintiff is not carrying on any further construction at the suit site. What is being carried out are merely tenantable repairs. He would submit that the Appellant-Plaintiff deserves to be granted an opportunity to prove his case in the suit and for that purpose grant of interim protection to the suit structure during pendency of the suit is necessary.

4. The learned Advocate appearing for the Municipal Corporation would oppose the Appeal and support the order of the City Civil Court.

5. I have gone through the notice dated 9 May 2023 in which it is alleged that the Appellant-Plaintiff had commenced and was unlawfully carrying on unauthorized construction of RCC Columns & Beams on existing ground floor structure admeasuring 12.33 mtrs. X 8.45 mtrs having height 3 mtrs. at the suit site. Appellant-Plaintiff filed reply to the notice on 18 May 2023 and raised following defence:

“ 2. My client states that by virtue of the said notice, an attempt is being made to suggest as if, my client is trying to carry out necessary construction with RCC Column and Beams on the existing structure situated at the aforesaid address. My client states that the entire contentions raised by you are false on the fact of it as no such construction of whatsoever nature carried out by my client nor is ongoing nor my client have any intention to carry out any such construction.

3. My client states that right from beginning, the premises in question is consisting of ground plus 1st floor and Attic Floor as such, my client have not carried out any additions or alteration of whatsoever nature to the said structure. My client states that since the premises in question is situated near sea-shore, the plaster of the premises gets damaged because of salty air and as such, before arrival of the monsoon, my client is required to carry out necessary tenantable repairs as alling under Section 342 of the M.M.C. Act and accordingly, my client had carried. ”

6. Thus Appellant-Plaintiff denied execution of any work at the suit site. A defence was taken that the Appellant-Plaintiff was executing merely tenantable repairs permissible under Section 342 of the Act of 1988.

7. I have however seen the photographs produced along with the Appeal which clearly indicate carrying out construction consisting of the RCC Columns & Beams at the suit site. In that view of the matter, the defence put forth by the Appellant-Plaintiff about execution of tenantable repairs appears to be prima facie unbelievable. It appears that till passing of the impugned order, the Appellant-Plaintiff was granted ad-interim protection which is extended by this Court by order dated 21 June 2023.

8. In my view therefore no prima facie case was made out by the Appellant-Plaintiff for grant of any ad-interim protection. No fault can be found in the impugned order dated 5 June 2023 passed by the City Civil Court. Appeal is being devoid of merits is dismissed without any order as to costs.

9. In view of disposal of Appeal from Order, Interim Application No.12701 of 2023 does not survive and stands disposed of.

(SANDEEP V. MARNE, J.)