

Prajakta Vartak

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

**APPEAL FROM ORDER NO. 759 OF 2014
WITH
CIVIL APPLICATION NO. 923 OF 2014**

Shahzad H. Bakht ..Appellant
Vs.
Municipal Corporation of Greater Mumbai & Anr. ...Respondents

Mr. Ranjit Thorat, Senior Advocate i/b. Pradeep Thorat for Appellant.
Mr. R. Y. Sirsikar for Respondent No.1/MCGM.
Mr. Satyan N. Vaishnav with Ms. Nupur Mukherjee i/b. M/s. N.N.
Vaishnawa & Co. for Respondent No.2.

**CORAM : G.S. KULKARNI, J.
DATE : JANUARY 11, 2023**

P.C.:

1. Heard Mr. Thorat, learned counsel for the appellant, Mr. Sirsikar, learned counsel for respondent no.1/MCGM and Mr. Vaishnav, learned counsel for respondent no.2.

2. This appeal was filed on 30 July, 2014, which assails an order dated 05 July, 2014 passed by the learned Judge, City Civil Court at Bombay, whereby Notice of Motion No.2212 of 2014 as filed by the appellant/plaintiff in Long Cause Suit No.1508 of 2014 praying for temporary injunction has been dismissed. When the appeal was moved

for the first time before this Court on 01 August 2014, an ad-interim protection which was granted by the Trial Court was continued by a Co-ordinate Bench of this Court (K.K. Tated, J.). The said order is required to be noted which reads thus:-

“1. Mentioned. Not on board. At the request of learned counsel for the Appellant, the matter is taken on board for urgent orders.

2. By this Appeal from Order the Appellant original Plaintiff challenges the order dated 5th July 2014 passed by the Bombay City Civil Court, Mumbai dismissing the Appellant's Notice of Motion No. 2212 of 2014.

3. The learned counsel for the Appellant submits that the trial court, by its order dated 5th July 2014 granted interim protection for a period of four weeks.

4. Considering this fact, Office is directed to issue notice before admission to the Respondents, returnable on 25th August 2014.

5. In addition to usual mode of service, the Appellant is directed to serve the Respondent by way of private notice either by RPAD and/or by hand delivery and to file an Affidavit of service to that effect on or before next date.

6. The Appellant is directed to remove office objections on or before 20th August 2014 failing which the Appeal from Order shall stand dismissed without further reference to the court.

7. Interim protection granted by the trial court on 5th July 2014 to continue till next date.

8. Liberty granted to the Appellant to file compilation of documents with copy to other side.

9. The learned counsel for the Respondent waives service.

S.O. to 25th August 2014.”

3. It is stated that the said order has continued to operate till date.

In the meantime, the suit has progressed. The plaintiff is already in the witness box and he is now being cross-examined by defendant no.2/ landlord.

4. In the above circumstances, in my opinion, when the appeal itself is pending in the aforesaid situation for a period of more than 8 years, it would be appropriate that the suit itself is decided as expeditiously as possible, however, keeping open all contentions of the parties to be urged in the pending suit.

5. Needless to observe that the suit shall be decided on its own merits. All the parties are directed to co-operate in the early disposal of the suit.

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

7. The learned trial Judge shall make an endeavor to dispose of the suit within a period of 4 months from today considering the fact that defendant no.2 is about 90 years old, as also a very short issue is involved in the suit.

8. The learned trial Judge shall also consider that all unwarranted adjournments on the part of the plaintiffs are avoided. As the interim

protection as noted above has continued, the same shall continue to operate till the disposal of the suit. However, such an order is passed without examining the merits of the rival contentions of the parties and the suit be decided on its own merits and without being influenced by the continuation of the interim protection granted by this Court.

9. Civil application No. 923 of 2014 would not survive. It is accordingly disposed of.

10. No costs.

[G.S. KULKARNI, J.]