

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

**APPEAL FROM ORDER NO. 539 OF 2023
WITH
INTERIM APPLICATION NO. 13319 OF 2023**

SANTOSH
SUBHASH
KULKARNI

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Seema Dinesh Mehta ...Appellant

Versus

Municipal Corporation of Greater Mumbai ...Respondent

Mr. Aabhishek Upadhyay, a/w Sumandevi Yadav, for the
Appellant.

Ms. Smita Tondwalkar, for the MCGM/Respondent.

Mr. Kiran Kumar and Mr. Bapurao Annamwarl, Asst. Engg.,
(B&F) L-4, present.

CORAM: N. J. JAMADAR, J.

DATED : 11th JULY, 2023

ORDER:-

1. Heard the learned Counsel for the parties.
2. The challenge in this appeal is to an order passed in draft Notice of Motion No.2437 of 2023 in LC Suit No.1510 of 2023, whereby the prayer for the appellant – plaintiff to grant ad-interim relief came to be rejected.
3. In the suit, the plaintiff assailed the legality and validity of the notice dated 27th June, 2023 calling upon the owner - occupant of the building Ajay Niketan situated at Sion, Chunabhatti, Mumbai, to vacate the said building for the

purpose of immediate demolition as the said structure became dilapidated and was categorized as C-1.

4. The instant suit has a prelude in LC Suit No.1287 of 2017 instituted by the plaintiff. In the said 2017 suit, the plaintiff had challenged the notice dated 30th May, 2017 issued under Section 354 of the Mumbai Municipal Corporation Act, 1888. It seems, initially the learned Judge, City Civil Court, by an order dated 1st July, 2017 in Notice of Motion No.2147 of 2017 in LC Suit No.1287 of 2017 had granted ad-interim relief in terms of prayer Clause (a) till filing of the reply by the defendant/Corporation subject to the plaintiff filing an undertaking. The record indicates that the respondent – Corporation had filed written statement-cum-reply. Thereafter, the said suit was listed before the City Civil Court on number of occasions. In the *roznama* dated 12th October, 2022 and 16th June, 2023, the Court recorded that there is no interim protection. It seems that after obtaining an ad-interim order, the plaintiff did not diligently prosecute the said suit. Instead, after the notice dated 28th June, 2023 a fresh suit came to be instituted. In fact, the said notice dated 28th June, 2023 was in continuation of the action initiated by the Municipal Corporation under notice dated 30th May, 2017.

5. The learned Judge, City Civil Court, in the aforesaid backdrop, was not persuaded to exercise the discretion in favour of the plaintiff. It was, *inter alia*, noted that except the plaintiff, the rest of the occupants of the building had vacated. There was an imminent danger on account of dilapidated nature of the building, and the categorization of the said building C-1 was not *prima facie* found to be objectionable.

6. The learned Counsel for the appellant submitted that the interim order granted in LC Suit No.1287 of 2017 was not vacated by a specific order. The submission does not advance the cause of the plaintiff. Consistent with this submission there would be no cause of action to institute a fresh suit if the interim order passed in Suit No.1287 of 2017 continued to operate. The *roznama* of Suit No. 1287 of 2017, which is tendered for the perusal of the Court by the learned Counsel for the respondent, on the contrary, indicates that the Court as well as the parties proceeded on the premise that no ad-interim order was in operation.

7. In any event, in the intervening period, the Court is informed, the essential supplies to the suit building have been cut off and it has since been vacated. As noted above, the plaintiff was the sole occupant of the building. The rights of the

plaintiff as the tenant of the portion in her occupation are otherwise statutorily protected. The prayer for interim protection at this stage is fraught with great risk to life and properties. Therefore, the learned Judge, City Civil Court, cannot be said to have committed any error in declining to grant ad-interim relief.

8. Hence, the appeal stands dismissed.

9. In view of disposal of the appeal, interim application does not survive and stands disposed.

[N. J. JAMADAR, J.]