

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (STAMP) NO.22072 OF 2022
WITH
INTERIM APPLICATION NO.18921 OF 2022
IN
APPEAL FROM ORDER (STAMP) NO.22072 OF 2022

Tabraez Abdul Hamid Coatwala
V/S
The Brihanmumbai Municipal
Corporation for Greater
Mumbai & Ors.

....Appellant/Applicant

....Respondents

...

Mr. Yashodeep Deshmukh a/w Mr. Rayyan Nasir, Mr. Harshit Kabali for
the Appellant/Applicant.
Ms. Smita Tondwalkar for Respondent-MCGM.

...

CORAM: SANDEEP V. MARNE, J.
DATE : OCTOBER 27, 2023.

P.C.:

1 The challenge in the present Appeal is to the order dated 15 July 2022 passed by the City Civil Court rejecting Notice of Motion No.1257 of 2022.

2 The Appellant/Plaintiff has instituted L.C. Suit No.100590 of 2022 against the Brihanmumbai Municipal Corporation, Maharashtra Housing and Development Authority (**MHADA**) and Defendant No.6, who is

Appellant/Plaintiff's tenant. The prayer in the suit is for demolition of the entire fifth floor constructed by Defendant No.6 at the suit property.

3 It is an admitted position that Defendant No.6 is Appellant/Plaintiff's tenant and the Appellant/Plaintiff has filed RAE and R Suit No.1177 of 2021 in the Small Causes Court against Defendant No.6 seeking his eviction on the ground of non-payment of rent, act of waste and damage and unauthorized additions and alterations of permanent nature. Thus, the suit filed before the Small Causes Court seeking eviction of the tenants interalia includes the ground of carrying out unauthorized additions and alternations. In parallel proceedings Appellant/Plaintiff wants the Municipal Corporation to demolish the said additions and alterations, terming them as unauthorized. The City Civil Court has proceeded to reject the Notice of Motion on the ground that the issue of constructing of additions and alterations of permanent nature in the suit premises is subject matter of RAE & R Suit No.1177 of 2021 filed before the Small Causes Court.

4 Mr. Deshmukh would submit that the suit filed in the City Civil Court is for recovery of possession of just one room in possession of Defendant No.6 whereas the suit filed before the City Civil Court is for demolition of the construction on the entire fifth floor of the building. In my view, this would not have any impact so far as Appellant/Plaintiff's entitlement for grant of temporary injunction is concerned. If the entire

fifth floor is demolished, as per the prayer sought by the Appellant/Plaintiff in his suit, the Defendant No.6 would lose possession of the room in question from which Appellant/Plaintiff seeks his eviction. Thus the suit appears to have been filed for indirectly achieving eviction of Defendant No.6. No prima facie case thus exists against the Appellant/Plaintiff for grant of any temporary injunction. The City Civil Court has rightly rejected the Notice of Motion. No error can be traced in the order passed by the City Civil Court. The Appeal being devoid of merits, is dismissed without any orders as to costs.

5 In view of the disposal of the Appeal, the Interim Application also disposed of accordingly.

(SANDEEP V. MARNE, J.)