

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 682 OF 2023
WITH
INTERIM APPLICATION NO.14678 OF 2023

Siddiqui Mohammed Ayub Nizamuddin ...Appellant

Versus

Municipal Corporation of Greater Mumbai ...Respondent

...

Mr. Ashok Pande a/w Mr. Shobhit Shukla, for Appellant.

Mrs. Smita Tondwalkar, for Respondent - MCGM.

...

CORAM : SANDEEP V. MARNE, J.

DATE : AUGUST 30, 2023.

P.C.:

1. By this Appeal, Appellant challenges order dated 7 August 2023 passed by the City Civil Court rejecting Notice Motion No.992 of 2010. The suit has been filed by the Appellant to restrain the Municipal Corporation from demolishing the suit structure on the basis of notice dated 10 March 2010. Appellant-Plaintiff filed Notice of Motion No.992 of 2010 for grant of temporary injunction to restrain the Municipal Corporation from implementing the notice dated 10 March 2010.

2. The learned Counsel for Appellant would submit that there was ad-interim relief granted in favour of the Appellant-Plaintiff during pendency of the Notice of Motion. By order dated 7 August 2023, the City Civil Court has proceeded to reject the Notice of Motion No.992 of 2010.

3. I have gone through the letter dated 10 March 2010. It is not issued under any particular provision of the Mumbai Municipal Corporation Act, 1988 (MMC Act, 1988). It however refers to a previous notice dated 20 July 2009 issued under the provisions of Section 354(A) of the MMC Act, 1988. It also alleges that in pursuance of the said notice, the suit structure was demolished on 22 July 2009. The City Civil Court has not accepted this statement about the letter dated 10 March 2010 and has held in Paragraph 11 of his order that the Defendant did not place any document to prove that the suit structure was demolished on 22 July 2009. Be that as it may. The Appellant has produced copy of notice dated 24 January 2023 issued under the provisions of Section 351(1A) of the MMC Act, 1988 along with Interim Application No.14678 of 2023. He would submit that the said notice is in respect of the very same suit structure. On taking instructions from his clients, the learned Counsel for Appellant would submit that the Appellant is willing to withdraw the suit challenging letter dated 10 March 2010 and would pursue

the cause of action with respect to the notice dated 24 January 2023. Since a fresh notice under Section 351(1A) of the MMC Act, 1988 has been issued on 24 January 2023, the proposed demolition of the suit structure in pursuance of the said notice would give rise to a fresh cause of action.

4. The statement of the learned Counsel for Appellant about withdrawal of the suit is accepted. Therefore nothing is required to be adjudicated in the present Appeal. The Appeal is accordingly disposed of with a liberty to the Appellant to challenge notice dated 24 January 2023 and speaking order, if any passed in pursuance thereof by filing a fresh suit.

5. The Municipal Corporation shall not demolish the suit structure except in accordance with the notice dated 24 January 2023.

6. The Appellant shall be at liberty to file a further reply to the notice dated 24 January 2023 within a period of Seven days from today.

(SANDEEP V. MARNE, J.)