

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 793 OF 2023
WITH
INTERIM APPLICATION NO. 15633 OF 2023

Mr. Allauddin Abdul Wahid

Qureshi

...Appellant

V/s.

Municipal Corporation of Greater

Mumbai, Thr. Designated Officer,

K-West Ward

...Respondent

Mr. Ashok Mishra, for the Appellant.

Mr. Santosh Parad, for the Respondent-M.C.G.M.

CORAM : SANDEEP V. MARNE, J.

Dated : 21 September 2023.

P.C. :

1. By this Appeal, the Appellant challenges order dated 13 September 2023 passed by the City Civil Court dismissing Notice of Motion No. 1325/2023 filed by the Appellant-plaintiff seeking temporary injunction to restrain the Municipal Corporation from acting on the notice issued on 4 September 2023 under the provisions of Section 354A of the Mumbai Municipal Corporation Act, 1888 (**Act of 1888**).

2. I have heard the learned counsel for the Appellant who would rely upon the panchanama carried out by the police authorities on 11 August 2023 in support of his contention that the first floor structure was in existence prior to issuance of notice dated 4 September 2023. He would therefore contend that since the structure was already in existence, the notice under Section 354A of the Act of 1888 could not have been issued. He would submit that there was incident of fire on account of which the first floor premises were damaged and all that the Appellant-Plaintiff was doing was tenantable repairs which are permissible under the provisions of Section 342 of the Act of 1888.

3. I have heard the learned Advocate appearing for the Municipal Corporation. He would oppose the Appeal and support the order passed by the City Civil Court.

4. After having considered the submissions canvassed by the rival parties, the short issue that arises for consideration is whether the Appellant could prove existence of the structure on the first floor prior to the datum line of 1 April 1962. Admittedly, the Appellant has not placed on record even a single document which could prove existence of the structure on the first floor prior to the said datum line. All that could be proved by the Appellant-Plaintiff is existence of ground floor structure and its tolerable nature.

However so far as the premises on the first floor are concerned, no document was produced before the Municipal Corporation to show existence of the said structure prior to the datum line. During the course of inspection carried out by the Municipal Corporation before issuance of the notice dated 4 September 2023, it was found that the Appellant had commenced construction of first floor premises using M.S. Angle, B.M. Walls, A.C. sheet roof and laadi coba slab admeasuring 7 mtr x 3 mtr x 3 mtr. It is therefore hard to believe that the nature of construction undertaken by the Appellant would fall within the meaning of tenantable repairs under Section 342 of the Act of 1888. In my view, therefore no case was made out by the Appellant-Plaintiff before the City Civil Court for grant of discretionary and equitable relief of temporary injunction. No fault can be found in the order of the City Civil Court. The Appeal being devoid of merits is **rejected** without no order as to costs.

5. With dismissal of the Appeal, Interim Application No. 15633/2023 filed for injunction, does not survive. The same is disposed of as having become infructuous.

SANDEEP V. MARNE, J.

NEETA
SHAILESH
SAWANT

Digitally
signed by
NEETA
SHAILESH
SAWANT
Date:
2023.09.21
17:15:18
+0530