

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 801 OF 2023
WITH
INTERIM APPLICATION NO.15685 OF 2023

Dayashankar Bhagwandin Mourya ...Appellant

Versus

The Municipal Corporation of Greater Bombay,
Through Its N-ward and Anr. ...Respondents

...

Mr. S.S. Redekar, for Appellant.

Mr. R.Y. Sirsikar, for Respondent – MCGM.

Mr. Angaraj Ganpat Puri, Sub Engineer (Maintenance Dept.) N-Ward,
MCGM, present.

...

CORAM : SANDEEP V. MARNE, J.

DATE : SEPTEMBER 27, 2023.

P.C.:

1. Admit. With the consent of learned counsels appearing for the parties, the Appeal is taken up for final disposal.

2. The Appellant is aggrieved by order dated 16 September 2023 passed by the City Civil Court refusing to grant ad-interim relief in Draft Notice of Motion filed for grant of temporary injunction. Appellant-Plaintiff

has instituted L.C. Suit No.2197 of 2023 challenging Notice dated 28 March 2023 and order dated 12 September 2023 in respect of the suit structure.

3. It appears that in respect of the same suit structure, a Notice was issued under the provision of Section 314 of the Mumbai Municipal Corporations Act, 1888 on 23 June, 2011 alleging that the Plaintiff had erected the suit stall on a public street. Plaintiff had filed reply to the said Notice on 24 June, 2011 and a speaking order was passed by the Municipal Corporation on 5 July, 2011. The Notice dated 23 June, 2011 and speaking order dated 5 July 2011 became subject matter of challenge in L.C. Suit No.1467 of 2011. Since Notice of Motion seeking temporary injunction in that suit was rejected by the City Civil Court, Plaintiff-Appellant filed an Appeal from Order (St.) No.23791 of 2017 before this Court, which came to be disposed of by order dated 30 October 2017. This Court set aside the order of the City Civil Court refusing to grant temporary injunction and directed that the ad-interim relief granted earlier shall continue to operate till disposal of the suit. The City Civil Court was directed to complete the trial within six months.

4. Accordingly, it appears that the Suit No.1467 of 2011 was taken up for hearing by the City Civil Court on 15 January 2018, when a Junior

Engineer on behalf of the Municipal Corporation appeared and made a statement that the Municipal Corporation was ready to consider the documents filed by Plaintiff and to pass a fresh order. Recording that statement, the Suit was disposed of granting protection in favour of Plaintiff till passing of the order and for further period of two weeks, in the event of passing of adverse order.

5. In pursuance of liberty granted by the City Civil Court by its order dated 15 January 2018, Plaintiff filed Additional document and reply on 24 January 2018. It appears that till date the Municipal Corporation has not passed any order in pursuance of the statement made before the City Civil Court.

6. Instead, the Municipal Corporation proceeded to issue a communication dated 28 March, 2023 to Plaintiff accusing him of installing four commercial structures causing obstruction and encroachment on the footpath. Plaintiff was directed to submit relevant documents to prove authenticity of the structures within 48 hours. Plaintiff replied the said communication on 31 March, 2023. The Municipal Corporation has thereafter passed final order dated 12 September 2023 holding that the Plaintiff was unable to produce any document showing authenticity of the suit

stall and directing the Plaintiff to remove the same. Communication dated 28 March 2023 and order dated 12 September 2023 are subject matter of fresh suit bearing L.C. Suit No.2197 of 2023 filed by the Plaintiff.

7. Mr. Sirsikar, the learned counsel appearing for the Respondent-Municipal Corporation would submit that the order dated 12 September 2023 is the order which was supposed to be passed as per the statement made before the City Civil Court on 15 January 2018. I am unable to agree. Firstly, the said order dated 12 September 2023 refers to communication dated 28 March 2023, which does not make any reference to the order of the City Civil Court on 15 January 2018. On the contrary, it accused Plaintiff of installing four commercial structures on the footpath. In the earlier notice issued to the Plaintiff on 23 June 2011, he was accused of installing a single stall admeasuring 6.50 m x 0.90 m on the footpath. Therefore, it is hard to believe that the communication dated 28 March 2023 is in continuation of the proceedings initiated vide Notice dated 23 June 2011. *Prima facie* therefore it appears that the Municipal Corporation has failed to pass any order in pursuance of the order passed by the City Civil Court on 15 January 2018 in Suit No.1467 of 2011. Instead of passing such order as per the statement made before the City Civil Court, the Municipal Corporation has proceeded to issue

communication dated 28 March 2023, which itself appear to be in nature of a Notice (without referring to any particular provisions of the Act) accusing Plaintiff of erecting four commercial structures.

8. I am therefore of the view that Appellant-Plaintiff has made out a *prima facie* case for grant of ad-interim relief in the Draft Notice of Motion.

9. Accordingly, the order passed by the City Civil Court on 16 September 2023 refusing to grant ad-interim relief in the Draft Notice of Motion is set aside. The Municipal Corporation is restrained from taking any action in respect of suit stall in pursuance of the communication dated 28 March 2023 or order dated 12 September 2023 till decision of the Draft Notice of Motion.

10. The City Civil Court is requested to make an endeavor to decide the Notice of Motion as expeditiously as possible, preferably with a period of six months from today, without being influenced by any of the observations made in this order. The Municipal Corporation shall be at liberty to pass Order as per statement made on 15 January 2018 in Suit No.1467 of 2011 after considering documents produced by Appellant. In the event of passing such Order, the City Civil Court shall consider the effect of that Order while deciding the Motion.

11. With the above directions, the Appeal is allowed and disposed of.
Interim Application does not survive and stands disposed of.

(SANDEEP V. MARNE, J.)