

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

**APPEAL FROM ORDER NO. 1016 OF 2022
WITH
INTERIM APPLICATION NO. 19377 OF 2022**

Sristi Hospitality Pvt. Ltd.

... Appellant/
Applicant

Versus

The Designated Officer – IV, Assistant Engineer (B
& F) K/West, Municipal Corporation for Greater
Mumbai

...Respondent

Mr. Sanket Mungale for the appellant/applicant.

Ms. Smita Tondwalkar for the respondent/MCGM.

CORAM: G. S. KULKARNI, J.
DATED: 14 February, 2023

P.C.

- 1.** Not on board. Upon mentioning, taken on board on a praecipe as moved on behalf of the appellant.
- 2.** The appellant assails an order dated 10 October, 2022 passed by the learned Judge of the City Civil Court, Borivali Division, Dindoshi in Notice of Motion No. 773 of 2018 in L.C. Suit No. 321 of 2018. The cause of action to file the suit in question is a notice issued by the Municipal Corporation dated 3 May, 2016 under Section 53(1) of the MRTP Act objecting to the illegal construction as undertaken by the appellant/plaintiff described to be an unauthorized development as set out in Item nos. (i) to (ix) of the Schedule

contained in the said notice. A reference to such illegal construction as objected by the Municipal Corporation is required to be noted:

“(i) Unauthorise construction of M.S. ladder erected on West side open space of the building.

“(ii) Unauthorize construction of M.S. frame structure constructed on terrace at 1st floor of building.

“(iii) Unauthorize entry from terrace of the building at 1st & 2nd floor/

“(iv) Unauthorize removal of internal B.M. walls at Ground, 1st and 2nd floor of the building.

“(v) Unauthorize construction of room on west side with B.M. walls & ladi coab slab of adm size bout 3’5” X 12’ at 1st floor of building.

“(vi) Unauthorize extension with ladi coba slab and M.S. ladder on south side at 1st and 2nd floor of building.

“(vii) Unauthorize enclosure of balcony with M.S. frame and wooden partition at 2nd floor of building.

“(viii) Unauthorize construction in open space of the building which is in contravention approved plan sanction by M.C.G.M. vide no. CE/315/Misc/K/WS dated 08.06.1999.

“(ix) Unauthorize additions/alterations on all floors of buildings at Liberty Lodge Building, D.J. Road, Vile Parle (W), Mumbai – 400 056.”

3. The appellant/plaintiff submitted its reply dated 6 June, 2016 to the said notice. Perusal of the said reply does not indicate any material which would justify that the construction as objected by the Municipal Corporation was in any manner part of the sanctioned plan and/or otherwise approved by the Municipal Corporation.

4. Learned counsel for the appellant has drawn the Court’s attention to subsequent correspondence dated 3 August, 2016, which is in regard to the

Municipal Corporation passing order directing the appellant to remove the authorized construction.

5. On a query made to the learned counsel for the appellant as to which of the material on record would indicate that the construction carried out by the appellant was authorized, learned counsel for the appellant would invite the Court's attention to the contents in the plaint and more particularly paragraph 19 and the correspondence in that regard. The contention being that the plan of 1999 which the Municipal Corporation is considering is not the actual plan and in fact what was required to be seen is the 1985 plan. However, such contention was not the case of the appellant/plaintiff in the reply to the show cause notice.

6. On the other hand, learned counsel for the Municipal Corporation has drawn the Court's attention to the averments as made in the reply affidavit/written statement filed by it before the trial Court, wherein it is categorically pointed out in paragraph 8 thereof that there was no document whatsoever as furnished by the appellant/plaintiff to show that the notice structures were in any manner authorized. It was also pointed out that the appellant/plaintiff suppressed demolition of the notice structure on 2 September, 2016 and 30 January, 2018 after following due process of law,

hence the plaintiff was not entitled to discretionary reliefs and the suit be dismissed with costs.

7. Having heard learned counsel for the parties and having perused the impugned order, in my opinion, no illegality can be attributed to any of the findings as recorded by the learned trial Judge, which are based on record. There was no material before the Court that the objectionable construction was put up after applying for any construction permission and/or prior approval of the Municipal Corporation was taken to put up such construction. It appears from the contention as urged on behalf of the Municipal Corporation that an action of removal of the said unauthorized construction was already taken in regard to the notice structure on 2 September, 2016 and thereafter on 30 January, 2018, however, there was no disclosure of this by the appellant/plaintiff. It cannot be that the Municipal Corporation takes an action to remove the objected unauthorized construction and the appellant/plaintiff perpetrates the illegality by restoring/reinstalling such unauthorized construction. The appellant/plaintiff thus did not approach the City Civil Court in seeking a discretionary relief with clean hands. The learned trial Judge has considered the case of the appellant/plaintiff on all the issues and by the impugned order, which is a well reasoned order, has observed that the appellant/plaintiff had failed to make out any *prima facie* case for grant of a temporary injunction. The findings as recorded by the learned trial Judge are

borne by the record and are fully justified. It is clear that the appellant had failed to make out any a *prima facie* case or to demonstrate any legal right to retain the construction which appears to be brazenly unauthorized. Thus, the wheels of the law cannot be prevented from being moved by the Municipal Corporation to deal with such unauthorized construction. In my opinion, no case is made out by the appellant for interference in the impugned order passed by the City Civil Court. Appeal is accordingly rejected. No costs.

G. S. KULKARNI, J