

Vidya Amin

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

**APPEAL FROM ORDER NO. 41 OF 2016
WITH
CIVIL APPLICATION NO. 53 OF 2016**

Waman Arjun Gawade & Ors. ... Appellants
Versus
Municipal Corporation of Greater Mumbai ...Respondent

Mr. Vikram V. Pai for the appellants.
Mr. Yashodeep Deshmukh a/w. Mr. R.Y. Sirsikar for the
respondent/MCGM.

CORAM: G. S. KULKARNI, J.
DATED: 18 January 2023

P.C.

1. Heard Mr. Pai, learned counsel for the appellants and Mr. Deshmukh, learned counsel for the respondent.

2. This appeal has been filed assailing an order dated 14 December, 2015 passed by the learned Judge of the City Civil Court at Bombay whereby the ad-interim relief on a draft Notice of Motion as filed on behalf of the appellant/plaintiff has been rejected. In the impugned order, the learned trial Judge has observed that the suit was dismissed in default in 2013 and thereafter such Notice of Motion was taken out in 2015 when the Municipal Corporation issued notice to plaintiff under section 351 of Mumbai Municipal Corporation Act as to why the suit structure should not be demolished. It was observed that

the facts indicated negligence on the part of the appellant/plaintiff and no case was made out for grant of ad-interim order.

3. Perusal of the record of present proceedings would indicate that earlier the appellants have moved this Court assailing the impugned order in proceedings of Writ Petition (St.) No. 34488 of 2015 wherein by an order dated 17 December, 2015, interim protection was granted directing the respondent/Corporation not to demolish the suit structure. The said Writ Petition was not maintainable as the proper remedy for the appellant was to file an Appeal from Order, and the present appeal which came to be consequently filed.

4. On 22 December, 2015, a co-ordinate Bench of this Court (R.D. Dhanuka, J.) while adjourning the present appeal for admission to 11 January, 2016, passed an order continuing interim protection granted by this Court on 17 December, 2015 in the said Writ Petition till the adjourned date of hearing. The said protection has continued to operate till date.

5. Mr. Pai, learned counsel for the appellants submits that the Notice of Motion in question is still pending adjudication.

6. In the aforesaid circumstances, in my opinion, it is appropriate that the Notice of Motion itself is taken up for hearing by the learned trial Judge and decided as expeditiously as possible and in any event on or before 15 March, 2023.

7. All contentions of the parties are expressly kept open.

8. It needs to be observed that the appellant has remained protected by interim orders. However, such orders are passed not based on any substantive adjudication of the rival contentions of the parties and moreover, the said order was passed anticipating adjudication of the present proceedings. In this view of the matter, the appellants cannot continue to be enjoying such adhocism. The appellants need to now argue their Notice of Motion without seeking any adjournment of the proceedings before the trial Court. The Municipal Corporation also shall appear before the learned trial Judge and cooperate in early adjudication of the Notice of Motion. Learned trial Judge shall accordingly dispose of Notice of Motion after hearing the parties.

9. Ad-interim order passed by this Court on 22 December, 2016 which have continued to operate till date, shall continue to operate till the final orders are passed on the Notice of Motion.

10. Needless to observe that continuation of ad-interim protection is in no manner any reflection on the rival contentions of the parties. Learned trial Judge shall decide the Notice of Motion on its own merits and without being influenced of the continuation of the interim relief by the present order.

11. Disposed of in the above terms. No costs.

12. In view of disposal of Appeal from Order, Civil Application does not survive and the same is accordingly disposed of.

(G. S. KULKARNI, J)