

Vidya Amin

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

**APPEAL FROM ORDER NO. 18 OF 2023
WITH
INTERIM APPLICATION NO. 167 OF 2023**

Mrs. Satya Chidanand Shetty, through POA ... Appellant
Chidanand Maranna Shetty

Versus

The Municipal Corporation of Greater Mumbai ... Respondents

Ms. Sanjukta Dey a/w. Mr. Saiprasad Hole, Mr. Rishikesh Dube for the
appellant.

Mr. R.Y. Sirsikar for the respondent/MCGM.

CORAM: G. S. KULKARNI, J.
DATED: 12 January 2023

P.C.

1. Heard Ms. Dey, learned counsel for the appellant and Mr. Sirsikar,
learned counsel for the Municipal Corporation.

2. This Appeal from Order is filed by the appellant/ plaintiff against an
order dated 22 November, 2022 passed by the City Civil Court at Bombay on
a draft Notice of Motion as filed by the plaintiff in L.C. Suit (St.) No. 12564 of
2022. At the outset, it needs to be observed that the impugned order has been
passed in the absence of plaintiff and/or the plaintiff not being represented. It
appears from the order that the Municipal Corporation was heard and an ad-
interim relief on the plaintiff's draft Notice of Motion was rejected by a
reasoned order. It appears that later on the advocate for the plaintiff appeared

and noticing the rejection of ad-interim relief, tendered an application requesting that status quo for two weeks be maintained so as to approach this Court in appeal. The said application was adjourned to 23 November, 2022 with an order that “*Other side to say*”. Thereafter, on 24 November, 2022, the learned trial Judge on such application of the appellant/plaintiff passed the following order:

“ORDER

1. *Plaintiff has filed this application for granting status quo for 2 weeks to approach the Hon’ble High Court against the order rejecting ad-interim injunction.*
2. *Corporation opposed application stating tht ad-interim relief has been rejected after hearing and no merit for granting status quo.*
3. *Heard Adv. for the parties.*
4. *It is matter of record that by order dated 22/11/2022 ad-interim relief has been rejected after hearing the parties. The plaintiff is praying for status quo. However, granting status quo would amount to granting ad-interim injunction which is rejected by the Court. Hence, I pass following order:*

ORDER

Application Exh. 4 is rejected.

Plaintiff is directed to register the N/M till next date.

Authenticated copy of this roznama be supplied to both the parties.

Already adjd. To 19/01/2023 for N/M reply and W/S of deft. Nos. 1 to 4.”

3. Learned counsel for the appellant/plaintiff has submitted that the impugned order rejecting the ad-interim reliefs on the Notice of Motion filed by the appellant is ex-facie illegal contending that a reasoned order ought not

have been passed in absence of the appellant/plaintiff, which was to have a serious prejudice and impact on the cause being persued by the appellant in the Notice of Motion. The submission of learned counsel for the appellant is that, glaringly the learned trial Judge in paragraph 4 of the subsequent order dated 24 November, 2022 has observed that *“It is matter of record that by order dated 22/11/2022 ad-interim relief has been rejected **after hearing the parties**”*. It is her submission that such an observation of the learned trial Judge on the face of the record is perverse as the plaintiff was never heard, when the order dated 22 November, 2022 was passed rejecting the ad-interim relief. Learned counsel for the appellant/plaintiff has submitted that in these circumstances an opportunity ought to be granted to the appellant/plaintiff to move the City Civil Court in the Notice of Motion praying for ad-interim relief and/or for interim relief, as the trial Court may consider appropriate, by setting aside the impugned order.

4. On the other hand, learned counsel for the Municipal Corporation has sought to argue on merits. However, he is not in a position to dislodge the submissions as made on behalf of the appellant/plaintiff that when the order dated 22 November, 2022 was passed by the trial Court, the appellant/plaintiff was neither present nor represented. He is also not in a position to dislodge the

submissions made by the learned counsel for the appellant/plaintiff in respect of the subsequent order dated 24 November, 2022.

5. Having heard learned counsel for the parties and having perused both the orders dated 22 November, 2022 and 24 November, 2022, in my opinion, there is much substance in the contentions as urged on behalf of the appellant/plaintiff. It clearly appears that in the absence of the appellant/plaintiff, an adjudication on ad-interim reliefs on merits has been undertaken by learned trial Judge in passing the impugned order. It appears that in passing of the impugned order, the Municipal Corporation was extensively heard and submissions were recorded on the basis of which the learned trial Judge has arrived at a conclusion that no case for ad-interim relief was made out by the appellant/plaintiff, in absence of the appellant/plaintiff. If the proceedings were listed and the plaintiff was not represented, it was available to the learned trial Judge to not pass an order and leave the appellant/plaintiff to register the Notice of Motion. However, what has been done is adjudication of ad-interim relief on merits.

6. It appears that immediately during the course of the day, the advocate for the plaintiff appeared before the learned trial Judge and by a written application prayed for a status quo of two weeks to be granted inter alia contending that the impugned order rejecting ad-interim reliefs is intended to

be appealed before this Court. Even on such application, which was completely a discretionary application, which was required to be decided there and then, the learned trial Judge, however, quite peculiarly passed an order to the effect “*Other side to say*” and adjourned the said application to 23 November, 2022. It appears that the said application was not taken up on 23 November, 2022 and the same was taken up on 24 November, 2022, when the order as noted above has been passed.

7. The learned counsel for the appellant/plaintiff is correct in her contention that the approach of the learned trial Judge was legally perverse which has become writ large from all the three events, namely, Firstly, the learned trial Judge proceeded to adjudicate on merits the ad-interim relief on the Notice of Motion by detailed order in absence of the appellant/plaintiff. Secondly, later on, during the course of the day (22 November, 2022) when an order of status quo was prayed for, quite casually the learned trial Judge ordered the ‘*Other side to say*’ on such application, when admittedly such relief of a stay was required to be considered and dealt with a judicial approach, considering the interest of justice and in the facts and circumstances of the case, as to what would be the consequence of refusing such indulgence. There was no warrant in the fact-situation to call for the say of the respondent. Thirdly, such approach of the learned trial Judge does not stop at this which is further

amplified by the observation as made in paragraph 4 of the order dated 24 November, 2022, whereby contrary to the judicial record of the proceedings, learned trial Judge has observed that the order dated 22 November, 2022 was passed “**after hearing the parties**”. It is not possible to conceive how such observation could be made when the record was otherwise. In these circumstances, in my considered opinion, in passing the impugned orders, the learned trial Judge has completely lost sight of the onerous judicial obligation and fairness of the judicial procedure to be adopted in passing orders which in a given case may affect valuable legal rights of the parties.

8. It may be observed that ultimately the learned Judge otherwise could be right on merits in rejecting the ad-interim relief if such case was not made out by the appellant/plaintiff, however, for the above reasons, the impugned order would certainly require interference, as sanctity and fairness of the judicial procedure can never be compromised at any stage of the judicial proceedings, for any reason whatsoever.

9. In the light of the above discussion, there is no alternative but to set aside the impugned order dated 22 November, 2022 and the subsequent order dated 24 November, 2022 and remand the matter to the trial Court for hearing of the parties on the ad-interim/interim adjudication on Notice of Motion. Let the parties appear before the learned trial Judge on 23 January, 2023.

10. In the meantime, till the appropriate orders on the ad-interim/interim application of the appellant/plaintiff are passed by the learned trial Judge, the respondent/Corporation is directed not to take any coercive action in regard to the suit structure. Ordered accordingly.

11. All contentions of the parties on merits of the proceedings are expressly kept open.

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

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

(G. S. KULKARNI, J)