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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 942 OF 2023
WITH
INTERIM APPLICATION NO. 17314 OF 2023
IN
APPEAL FROM ORDER NO. 942 OF 2023**

Rahul Shirodkar

.....Appellant/Applicant

Vs.

The Municipal Corporation of
Greater Bombay through
Municipal Commissioner

.....Respondent

Mr. Amogh Singh i/b. Mr. Hardik Desai for the Appellant/Applicant.

Mr. R. Y. Sirsikar for the Municipal Corporation.

CORAM : GAURI GODSE, J.

DATE : 20th NOVEMBER 2023

(VACATION COURT)

P.C.

1. The plaintiff has filed this Appeal From Order to challenge the refusal to grant ad-interim relief. By the impugned order dated 27th October 2023, prayer for ad-interim relief is rejected, and the

respondent corporation is directed to file a detailed reply on the draft Notice of Motion.

2. Considering the short question involved in the matter, by consent the appeal is taken up for final disposal.

3. Learned counsel appearing for the appellant submits that by order dated 27th October 2023 passed below Exhibit 2, the trial court has granted time to challenge the impugned order in draft Notice of Motion till 20th November 2023. He submits that by the said order, the respondent-Corporation is directed not to take coercive action and not to act upon the notice and the speaking order impugned in the suit, in respect of the suit premises till 20th November 2023.

4. He further submits that the hearing of the notice of motion is fixed on 1st March 2024. He, therefore submits that if the interim protection granted by order dated 27th October 2023 is not extended, Notice of Motion as well as Suit will be rendered infructuous and the Corporation is likely to take coercive action and demolish the structure as referred to in the impugned notice.

5. The appellant has filed the suit for declaration that the notice dated 24th May 2023 issued under section 351 (1A) of the Mumbai Municipal Corporation Act, 1988 and the impugned order dated 10th October 2023 passed by the Corporation is illegal and bad in law. Pending the hearing and final disposal of the Suit, the appellant prays for interim protection not to demolish the suit structure. According to the appellant, the suit structure is described in paragraph 2 of the plaint, which includes the alleged unauthorised construction as stated in the impugned notice, which is annexed on page 97 of the appeal.

6. As per the impugned notice and the order impugned in the suit, the appellant has carried out our unauthorised construction as described in the schedule of notice dated 24th May 2023, which is annexed at Exhibit L to the present appeal.

7. Learned counsel for the appellant states that the alleged unauthorised construction is in existence prior to 1961-62. In support of his submission, he relies upon an assessment extract annexed at Exhibit D to the appeal.

8. Learned counsel appearing for the corporation submits that the Assessment order does not support the appellant's case that the unauthorised construction as described in the impugned notice and the impugned order is in existence as contended by the appellant. He submits that the appellant has carried out brickwork, including the construction of a staircase and toilet over the mezzanine floor. The extract does not refer to the mezzanine floor or the staircase or the construction of a toilet on the mezzanine floor.

9. Learned counsel for the appellant submits that the questions with respect to the existence of the unauthorised construction as per impugned notice and impugned order would require trial, and the same cannot be decided at this stage. He, therefore, submits that it is necessary to grant interim protection, failing which the suit will be rendered infructuous.

10. I have perused the papers of the appeal. Prima facie, I do not find that the assessment order relied upon by the appellant supports the appellant's case that the alleged unauthorised constructions, as described in the impugned notice and the impugned order of the

Corporation is in existence on the basis of the assessment order.

11. The learned counsel appearing for the appellant on instructions of the plaintiff makes a statement that in the event the appellant fails in the Notice of Motion seeking interim relief, the appellant shall remove the unauthorised construction as described in the impugned notice and impugned order passed by the Corporation on his own and at his own costs. The statement is accepted.

12. Learned counsel appearing for the respondents states that an affidavit in reply to the notice of motion will be filed within a period of four weeks from today.

13. Considering the aforesaid and the statement made by the appellant, I am inclined to extend interim protection granted by the trial court by order dated 27th October 2023 for a limited period. Hence, for the reasons stated above, I pass the following order :

- (i) Respondents shall file an affidavit in reply to the Notice of Motion in the Suit within a period of four weeks from today.

(ii) Subject to the appellant filing an undertaking on or before 22nd November 2023, the order dated 27th October 2023 passed below Exhibit 2 in L. C. Suit No. 3087 of 2023 shall continue for a period of eight weeks from today.

(iii) The undertaking of the appellant shall state that in the event favourable orders are not passed in the Notice of Motion in the said Suit, the appellant shall on his own and at his own cost demolish the alleged unauthorised construction as described in the impugned notice dated 24th May 2023 and the impugned order dated 10th October 2023 passed by the Corporation within a period of two weeks from the date of decision of the Notice of Motion.

(iv) Appellant is at liberty to make appropriate application before the City Civil Court for appropriate orders including extension of interim relief and expeditious hearing of the Notice of Motion.

(v) Appeal is disposed of in the above terms. In view of the disposal of the appeal interim application stands disposed.

(vi) It is made clear that the above protection is granted considering the statement of the appellant to file an undertaking as recorded above. All contentions of all parties on merits are kept open.

(vii) All concerned to act on an authenticated copy of this order.

[GAURI GODSE, J.]