

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 963 OF 2023
WITH
INTERIM APPLICATION NO. 17513 OF 2023

Bankim Lalji Gada

...Appellant

(Orig.Plaintiff)

V/s.

The Municipal Corporation of

Greater Bombay and anr.

..Respondents

(Orig.Resps)

Mr. Bhavin Gada with Mr. Dhawal Visawadia, Ms. Dharmi Savla i/by.
Harakchand & Co, for the Appellant.

Ms. Smita Tondwalkar, for the Respondent-M.C.G.M.

CORAM : SANDEEP V. MARNE, J.

Dated : 30 November 2023.

P.C. :

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

2. By this Appeal, the Appellant challenges Order dated 8 November 2023 passed by the City Civil Court rejecting *ad-interim* relief in Draft Notice of Motion filed by the Petitioner seeking temporary injunction to restrain the Municipal Corporation from implementing the Notice dated 13 October 2023 issued under the provisions of Section 351 of the Mumbai Municipal Corporation Act, 1888. It appears that after receipt of the reply of the Plaintiff, the Municipal Corporation has passed Speaking Order dated 13 October 2023. Perusal of the Notice dated 6 June 2023 would indicate that the same is issued in respect of construction of Mezannine Floor using Ladi Coba Slab and unauthorised construction of a Room using wooden parititon. The City Civil Court has refused to grant *ad-interim* relief, *inter-alia*, observing that the Plaintiff has not been able to show existence of the construction prior to the datum line as well as failure to produce structural stability report for the purpose of application of provisions of DCPR, 2034.

3. Mr. Gada, the learned counsel appearing for the Appellant would place reliance on the Circular dated 8 August 2005 issued by the Municipal Corporation which provides *inter-alia* for regularisation of Mezannine Floor constructed prior to 15 August 1997 in exisiting authorised buildings. Perusal of the Circular would indicate that the Mezannine Floor constructed prior to 15 August 1997 which do not cover more than one-third of the total floor area and whose height is not more than 1.52 mtrs can be regularised subject to various conditions. Mr. Gada, would submit that the Plaintiff is willing to

bring the construction of Loft/Mezannine Floor within the parameters specified in Circular dated 8 August 2005, in the event it is found that the existing Mezannine Floor/Loft does not conform to the requirements of the Circular. He would submit that some time be granted to the Plaintiff to make necessary alterations so as to bring the Mezannine Floor/Loft within the parameters specified in the Circular dated 8 August 2005.

4. So far as construction of Cabin by use of wooden partition is concerned, the City Civil Court has observed that construction of such light weight wooden partition/cabin upto the height of 2.2 meters is permissible subject to the structural stability of the building. Mr. Gada, would submit that the Plaintiff shall produce the Structural Stability Report of the building/structure with a view to justify permissibility of wooden partition inside the Shop.

5. In my view, the entire suit can be worked out if Plaintiff is granted opportunity to bring the Mezannine Floor/Loft within the parameters of the Circular dated 8 August 2005 as well as to justify permissibility of wooden partition under the provisions of DCPR, 2034.

6. Accordingly, the Appeal is **disposed of** by granting an opportunity to the Plaintiff to make the necessary alterations/modifications in Mezannine Floor/Loft as well as the wooden cabin within a period of three months from today. After

effecting such alterations/modifications, the Plaintiff shall make necessary application to the Respondent-Municipal Corporation seeking regularisation of both the structures. Such Application shall be decided by the Municipal Corporation within four weeks of receipt thereof. In the event, the Municipal Corporation rejects the regularisation application, it shall be free to act on the Notice dated 6 June 2023. Till decision of such regularisation application and for a further period of two weeks thereafter, the Municipal Corporation is restrained from acting on the Notice dated 6 June 2023. With the above directions, the Appeal is **disposed of**. Pending Interim Applications, if any also stand disposed of.

SANDEEP V. MARNE, J.

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