

Prajakta Vartak

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

**APPEAL FROM ORDER NO. 1172 OF 2022
WITH
INTERIM APPLICATION (ST.) NO. 762 OF 2023
WITH
INTERIM APPLICATION NO. 30560 OF 2022**

Chimanlal Suhklal Gomtilal & Anr. ..Appellants/Org.Plaintiffs
Vs.
Municipal Corporation for Greater Mumbai ...Respondent/Org.Defendant

Mr. Kalpesh Patil for Appellants.
Mr. Burhan Bhukhari with Mr. R. Y. Sirsikar for MCGM/Respondent
No.1.
Mr. Rohaan Cama with Mr. Anisha Karande and Mr. Gobinda Mohanty i/
b. M/s. Mohanty & Associates for Applicants in IAL No.762/23.

**CORAM : G.S. KULKARNI, J.
DATE : JANUARY 11, 2023**

PC.:

1. This appeal from order is filed by the appellants/plaintiffs assailing an order dated 21 December, 2022 passed by the learned Judge, City Civil Court at Bombay, whereby ad-interim reliefs on a draft notice of motion presented by the appellants/plaintiffs have been rejected by the following order:-

“

ORDER

01. Heard both the sides.

02. Having considered their submissions, at the outset, it is to be noted that the entire record is silent to assume legality of the notice

Page 1 of 16

11 January, 2023

structure. The plaintiffs invited my attentions on Speaking Order, which is passed today itself, referring the copy of assessment bill and submitted that the structure is assessed prior to 1962. However, this Speaking Order says otherwise. The defendant also manifested on going status of the construction after issuance of the notice dtd. 12.12.2022. Moreover, the parties seem to be litigation as per earlier WP No. 1003/14. In the circumstances, it can safely be assumed that the plaintiffs somehow avoided to make disclosure of all the facts. In addition, at this interim stage, there is nothing on record to infer sanctity of the structure. Nor, it is being justified on the ground that it existed since long and therefore, it is protected one or it is brought into existence in view of the permission for sanction plan of the defendant. In the result, I am not inclined to grant any ad-interim relief in favour of the plaintiffs.

order

- (i) The ad-interim relief is refused.
- (ii) The plaintiff is directed to get registered this suit and draft notice of motion till the next date.
Authenticated copy of this roznama be given to both the parties.”

2. This appeal was moved before a Co-ordinate Bench of this Court (Smt. Anuja Prabhudessai, J.) on 23 December, 2022, which was the last working day before the Court would close for X'mas Vacation, when the following order was passed granting an ad-interim protection:-

“ The Appellant herein has challenged the impugned order dated 21/12/2022 wherein the learned Judge, City Civil Court, Bombay has declined to grant ad-interim relief in Notice of Motion filed in Long Cause Suit No.2832 of 2022.

2. The Appellant had filed the suit challenging the legality of the notice dated 12/12/2022 passed by the Respondent – Corporation under section 354A of MMC Act. During the pendency of the suit, the Appellant has been served with speaking order dated 20/12/2022 wherein he has been directed to remove the unauthorized construction. The learned Judge has declined to grant ad-interim relief inter alia on the ground that the Appellant had prima facie failed to prove that the structure was existing since long or that it is a protected structure.

3. Learned counsel for the Appellant has drawn my attention to

the letter addressed to the Appellant by the Corporation which prima facie indicates that the 1st date of assessment in respect of the suit structure was 31/03/1962. Learned counsel for the Appellant states that the said letter pertains to the suit structure.

4. Considering the above letter and the statement, the notice structure needs to be protected till the next date of hearing. Hence, both parties are directed to maintain status quo till the next date of hearing. Reply, if any, to be filed on or before the next date of hearing.

5. Stand over to 09/01/2023.”

3. On the returnable date i.e. 09 January, 2023, the papers of the proceedings were produced before this Court and a prayer was made for continuation of the ad-interim order passed on 23 December, 2022. The Court had initially accepted such request by adjourning the proceedings to 15 February, 2023, however, later on, the landlords/interveners who are represented by Mr. Cama made a mention of the matter pointing out that the landlords were heard before the City Civil Court when the impugned order came to be passed, as also they had filed a caveat application, however, without any notice to the interveners, the present proceedings were moved and not only ad-interim orders on the present proceedings were obtained by the appellants, but the same were also continued. The Court in its order dated 09 January, 2023, noted the above circumstances. The order dated 09 January, 2023 passed by the Court reads thus:-

“ **ORDER**

1. Stand over to 15 February 2023.
2. Till the adjourned date of hearing, ad-interim order, if any, passed earlier shall continue to operate.
3. Parties are put to notice that on the adjourned date of hearing, the Court shall proceed to hear the parties.

Later on

4. Mr.Cama, learned Counsel has mentioned the matter stating that his clients are the interveners in the matter who were heard before the Trial Court when the impugned order came to be passed. He submits that his clients have also filed caveat application and there was no intimation given to his clients of the today's application.

5. In this view of the matter, the date of the matter is preponed to 11 January 2023.

6. Till the adjourned date of hearing, ad-interim order, if any, passed earlier shall continue to operate.

7. Mr.Cama, learned Counsel for the interveners shall inform all the parties in the proceedings, the preponed date.”
(emphasis added)

4. It is on such backdrop, the parties are heard today.

5. At the outset, it is required to be noted that the present case is a glaring example of abuse process of law as the discussion would unfold. The issue as raised in the suit before the trial Court, arises from a notice dated 12 December, 2020 issued by the Municipal Corporation under Section 354A of the Municipal Corporation Act, 1888 (for short, “MMC Act”). The prayers in the suit *inter alia* are for a decree that such notice and any action under the said notice is illegal. A reply to such notice of

the Municipal Corporation was submitted by the appellants/plaintiffs on 15 December, 2022, inter-alia recording that the notice as issued by the municipal corporation was false, frivolous, cyclostyled, bad in law, null and void and that the same was not applicable to the structure in question. In paragraph 4 of the said reply, it was stated that the appellants/plaintiffs have all the relevant and necessary documents in respect of the said premises such as rent receipts, electric bills, Bombay shops and establishment license, assessment bill, Inspection extract, city survey plan. What is glaring is that in paragraph 5 thereof, the appellants/plaintiffs stated that the structure was in existence and the same was already in very same condition on the date when the notice came to be issued and hence the impugned notice is not applicable. Considering such reply of the appellants/plaintiffs, the designated officer of the Municipal Corporation passed a speaking order dated 20 December, 2022 considering all the documents which were submitted by the appellants/plaintiffs, thereby concluding that there was no satisfactory and conclusive proof/documentary evidence which would indicate/prove, the existence of notice structure prior to datum line, for tolerated structure being 01 April, 1962 (as fixed for commercial structures), the structure being situated on private land and further there was no material to prove that the notice structure was an

authorized structure, constructed as per plans approved by Executive Engineer (Building Proposal) or other competent authority of the Municipal Corporation. Accordingly, the appellants/plaintiffs were directed to remove the said unauthorized work as set out in the order, failing which the same would be demolished by the Municipal Corporation. It appears that the appellants/plaintiffs had moved the City Civil Court, when a draft notice of motion was placed before the City Civil Court on 21 December, 2022, after passing of the speaking order, on which the ad-interim reliefs were refused by the impugned order.

6. At this stage, it is required to be noted that the landlord-ShyamBihari Sharma had intervened before the City Civil Court on the ground that he was proper and necessary party to the suit and that in moving the suit, there was substantial suppression of fact in seeking discretionary orders. The intervener was heard by the learned trial Judge when the impugned order rejecting the ad-interim reliefs was passed. As noted above, the intervener also filed a caveat application before the Court so that he could be heard in the event an appeal was to be moved by the appellants assailing the refusal of the ad-interim reliefs by the City Civil Court. The intervener is accordingly before the Court by way of an interim application filed by him in the present proceedings

[Interim Application (Stamp) No. 762 of 2023]. At this stage, it is also required to be noted that the Municipal Corporation had filed a reply affidavit before the trial Court.

7. At the very outset, Mr. Cama, learned counsel for the intervener/landlord has made a peculiar grievance and according to him, such grievance requires serious consideration. His first contention is that in the title of the appeal, there is a deliberate attempt on the part of the appellants/plaintiffs to make a mistake in the name of the appellant. His contention is that the appellant no.1 has described himself not as “Chimanlal Sukhlal Gomtiwal” but as “Chimanlal Sukhlal **Gomtilal**” and accordingly, the appeal is registered in a wrong name which according to him is certainly an attempt on the part of the appellants to grab an order so that the caveat as filed by the intervener is not noticed. The second contention is that there is also a glaring mistake in the manner in which the name of appellant no.1 has been described in the cause list. He pointed out that in the cause list, the name of appellant no.1 has been described as “**Chinmanlal Sukhlal Gomtilal**”. Mr. Cama’s submission is that thus not only the first name but also the last name of appellant no.1 was deceptive which was sufficient for not only the appellants, but the office of this Court to discard the caveat application, which would enable the appellants/plaintiffs to obtain orders from this Court behind

the back of the applicant/intervener. In so far as this grievance is concerned, in my opinion, there is certainly some substance.

8. Perusal of the record would indicate that the first name of the appellant no.1 is “Chimanlal” which has been rightly indicated in the title of the appeal, however, his name is clearly misspelled in the cause list when he is described in the record of this Court as “**Chinmanlal**”. In my opinion, such a mistake is not only disturbing being contrary to the record of the Court. Such mistake although may look minor and innocuous, however, it may in a given case, it may be fatal to the interest of the litigating parties causing a serious prejudice to somebody’s interest and at the same time, it may be beneficial to one of the parties to the litigation, in obtaining an undue advantage.

9. In the present case, a cumulative reading of both the mistakes namely the mistake in describing “Chimanlal” as “Chinmanlal” and the second mistake of appellant no.1 not being described by his original name “Gomtiwal” but being described as “Gomtilal” has brought about a situation creating a record different from what is ought to be. No efforts are taken by the appellants/plaintiffs to correct such title. Thus, the intention on the part of the appellants/plaintiffs to not correct this position appears to be not bonafide.

10. Such mistake in the cause list, as also the mistake of the appellants being wrongly described in the title of the appeal was not pointed out on the part of the appellants. All this would indicate of an intention which is not honest/bonafide of the appellants/plaintiffs in prosecuting the present proceedings, on such deceptive name in the title of the appeal. The only intention appears to be to keep away the interveners and obtain an undue advantage of the order which was earlier obtained by moving this Court as noted above.

11. In my opinion, in so far as the mistake in the first name of appellant no.1 is concerned, it appears to be an act on the part of the Registry, in regard to which the Registrar (Judicial) shall make an inquiry and take appropriate action in regard to the negligent conduct on the part of the concerned members of the staff, for having failed to discharge their official duties with precision and accuracy as wrong description of the parties in the Court records in certain cases can be devastating. If it is found in the inquiry that such a mistake had not caused any prejudice to the litigant before the Court namely the interveners, then there is some room to believe that it was a typographical mistake. Even assuming that it was a typographical mistake, in my opinion, certainly it is of a serious nature affecting the

administration of justice and a mechanism to avoid such mistakes is required to be set into motion.

12. In so far as the merits of the proceedings are concerned, at the very outset, it is required to be noted that the appellants appeared to have crossed all limits of legitimacy and honesty in pursuing the present proceedings. In fact they have abused the process of law not only before this Court, but also before the City Civil Court. They appear to have also attempted to mislead the Municipal Corporation in their brazenly false reply submitted to the notice of motion as discussed hereunder:-

(i) It was pointed out by Mr. Cama, learned counsel for the intervener that in regard to the legality of the structure, there was previous history of litigations filed before this Court. The Court's attention has been drawn to the orders passed by the Division Bench of this Court on Writ Petition (L.) No.1354 of 2013, Writ Petition (L.) No. 1355 of 2013, Writ Petition (L.) No.1356 of 2013, Writ Petition (L.) No. 1357 of 2013 on which on 15 July, 2013, a Division Bench of this Court had passed an order in the context of a challenge brought before the Court in regard to an action resorted by the Municipal Corporation under Section 351 of the MMC Act. The Division Bench in such order has categorically observed that a notice under Section 351 of the MMC Act dated 07

December, 2012 was issued to the appellants (petitioners therein) and a speaking order thereon was passed on 09 April, 2013 rejecting the case of the appellants observing that the case of the appellants that the structures as objected were tolerated structures namely constructed prior to 01 April, 1962 i.e. the datum line could not be accepted. It was observed by this Court that the petitions were filed on 30 May, 2013 and that the structures were in fact demolished on 01 June, 2013. It was also observed that thereafter representations were made to the municipal corporation, however no orders were passed. In these circumstances, the Court while disposing of the petitions made the following observations:-

“4. The fact, however, is that the structures have been demolished. The petitioners are always at liberty to pursue any remedies for the purpose of reconstructing their structures, if they are otherwise entitled in law to do so including filing representations to establish their case before the authorities. The contentions of the petitioners cannot be considered in these petitions and are kept open for being considered in any proceeding or representation that the petitioners may make.”

(ii) Things however did not stop at this as another petition was moved by appellant no.2 before this Court being Writ Petition No. 1003 of 2014 praying for substantive reliefs. In this petition also, appellant no.2 did not implead the landlords as the parties. In such petition, the appellant no.2 (the petitioner therein) prayed for the following reliefs:-

“(a) that this Hon’ble Court be pleased to issue a writ of certiorari or a writ, writ of mandamus or Order or direction in the nature of

certiorari for calling for records and proceedings in the matter of Order No.AMC/ES/635/I dated 11.02.2014 (EXHIBIT “N”) issued by Respondent No.3 and Order No.MCL/LS/866 dated 03.03.2014 (EXHIBIT “Q”) issued by Respondent No.2 along with material submitted before Respondent Nos. 1, 2 and 3, issuance of Notice No.L/BF-III/351/6878&79/12-13 dated 07.12.2012 (EXHIBIT “A”) u/s 351 of MMC Act, 1888 issued by Respondent No.5 in respect of Shop No.2, Gr. Floor, 107, Shrikant Kunj, Moreshwar Patankar Marg, Kurla (West), Mumbai 400 070 and after going through or otherwise of the same, the Petitioner is challenging the illegal action of demolition of Shop No.2 and challenging these Notice and Orders for quashing and setting aside the Impugned Notice No. L/BF-III/351/6878&79/12-13 dated 07.12.2012 (EXHIBIT “A”) and Impugned Notice and Order No.L/BF-III/351/6878&79/2012-13 dated 09.04.2013 (EXHIBIT “B”) passed therein and Notice and Order No.L/BF-XIII/351/6878&79/2012-13 dated 11.05.2013 (EXHIBIT “D”) passed by the Respondent No.6, Order No.DMC/Z-V/OD/228 dated 31.07.2013 (EXHIBIT “L”) passed by Respondent No.4, Order No.AMC/ES/635/i DATED 11.02.2014 (EXHIBIT “N”) passed by Respondent No.3 and Order No.MCL/LS/866 dated 03.03.2014 (EXHIBIT “Q”) passed by Respondent No.2;

(b) that this Hon’ble Court be pleased to issue a writ of certiorari or a writ, writ of mandamus or Order or direction in the nature of certiorari for calling for records and proceedings in the matter and after quashing and setting aside the Impugned Orders dated 11.02.2014 (EXHIBIT “N”) and 03.03.2014 (EXHIBIT “Q”), which are under challenged, direct Respondent Nos.1, 2, 3 and 4 to permit Petitioner to begin reconstruction of the authorised Shop Premises No.2 of Petition within period of two weeks and permit to complete reconstruction and further direct Respondent No.2 to pay the full cost of reconstruction and also payment of cost in respect of destruction of furnitures, fixtures, including directing Respondent No.1 to install original Electricity Meter along with all other appliances within period of two weeks forthwith.

(c) that this Hon’ble Court be pleased to issue a writ of certiorari or a writ, writ of mandamus or Order or direction in the nature of certiorari for calling for records and proceedings in the matter and direct Respondent No.2 to constitute independent Committee to investigate and take appropriate stringent action against the Competent Authority who knowingly and even after verification/re-verification of the Maps and documents showing the Shops/Shop No.2 as authorised prior to datum line have been illegally demolished during pendency of earlier Writ Petition No. 1620 of 2013 and to submit the Final Report by Respondent No.2 within a period of two months in respect of illegal action of Respondent Competent Authority;

(d) pending the hearing and final disposal of the Petition, to issue direction to Respondent No.2 not to permit any other person except Petitioner to resume the said Plot and permit him to fence the area of Shop No.2 (about approx 170 sq. ft.) for the purpose of fencing, preventing encroachment or construction till final Order.”

13. A Division Bench of this Court (A.S. Oka and A.P. Bhangale, JJ, as their Lordships then were) on 30 March, 2015 recorded that the structures were already demolished, and passed the following order issuing rule on such petition:-

“ Heard learned counsel appearing for the petitioner, learned counsel appearing for respondent Nos. 1 to 7 and learned counsel appearing for respondent Nos. 8 and 9.

2) Rule. Concerned counsel waive service.

3) Learned counsel for respondent Nos. 8 and 9, on instruction, states that the said respondents do not propose to develop the plot of land on which the structure of the petitioner was situated which has been demolished.

4) We accept the said statement and therefore, as to today, we are not inclined to grant any interim relief.”

14. The said Writ Petition No.1003 of 2014 is stated to be pending before this Court. The purpose for which the above order has been referred in some detail, is for the reason that the appellants had suppressed such substantive orders passed by this Court, and intended to suppress that the structures were demolished. The appellants had in fact clearly taken a contrary position in the reply to the notice of the Municipal Corporation in question issued to them under Section 354A of the MMC Act, in which, there was no whisper/reference to the said

orders passed by this Court. This clearly indicates the conduct of the appellants was to gain an undue advantage as also to overreach the orders passed by this Court.

15. On the teeth of such clear position on record, that too before the Division Bench of this Court, it appears that under the garb of the protection as granted by this Court by the ad-interim order dated 23 December, 2022, the appellants started undertaking construction and/or restoring the demolished structure. The photographs in that regard are placed on record by Mr. Cama on behalf of the interveners. Admittedly, there was no permission obtained from the Municipal Corporation. The appellants could not have taken law into their hands and commence construction, when no order of this Court permitted them to undertake construction much less by the Municipal Corporation.

16. On a query made to the learned counsel for the appellants as to whether in the plaint the prior background of the litigation before the Division Bench was pointed out, he could not justify as to why there is no reference of the orders passed by the Division Bench and the prior litigation being not pointed out praying for discretionary orders from the City Civil Court.

17. It also appears from the record that when the appellants moved this Court on 23 December, 2022, no such reference to prior litigation was pointed out. Thus, attempt on the part of the appellants was also to mislead this Court to grant undue protection and under such protection, complete the construction, although not permitted by the Municipal Corporation thereby creating an impression that the structures were in existence prior to the datum line, which was an issue, which was answered in negative not only by the Municipal Corporation but also not accepted by this Court in the prior litigation.

18. Thus as noted above, this is a classic case wherein the appellants have in every possible manner tried to abuse the process of law, by misleading not only the City Civil Court, but also this Court. The appellants have not left a single stone unturned in that regard, and in fact have practiced fraud on the Court, as also approached the Court with tainted hands. No sympathy whatsoever can be shown to such litigants and the Court in fact would fail in its duty if such proceedings are permitted to be withdrawn simplicitor after having already abused two Courts of law firstly, the City Civil Court and secondly, the High Court.

19. In the above circumstances, the appeal is dismissed with

compensatory costs which are quantified at Rs.3 Lakhs each to be deposited by the appellants with the Maharashtra Legal Services Authority within a period of two weeks from the date a copy of this order is available on the website of this Court. In the event such amounts are not deposited, the same be recovered from the appellants as arrears of land revenue.

20. A copy of this order be forwarded to the Member Secretary of the Maharashtra Legal Services Authority for appropriate action, as also to the Registrar of the City Civil Court to be placed before the concerned Court.

21. Disposed of in the above terms.

22. Needless to observe that as the appeal has been dismissed, all interim orders are vacated. The Municipal Corporation shall follow the further procedure of law.

23. Interim applications would not survive. The same are disposed of accordingly.

[G.S. KULKARNI, J.]