

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.1050 OF 2023
WITH
INTERIM APPLICATION NO.18241 OF 2023
IN
APPEAL FROM ORDER NO.1050 OF 2023

....

Sakharam Motiram Bhandari
V/S

....Appellant/Applicant

The Municipal Corporation of
Greater Mumbai

....Respondent

...

Mr. Pradeep Thorat a/w Mr. J.S. Yadav i/b Mr. Bholeprasad S. Shukla for
the Appellant/Applicant.

Mr. R.Y. Sirsikar for the Respondent-MCGM.

Mr. Santosh Raje i/b Ms. Sharda Pandey for the Applicant/Intervenor.

...

CORAM: SANDEEP V. MARNE, J.

DATE : DECEMBER 20, 2023.

P.C.:

1 Admit.

2 With the consent of the learned Counsel appearing for the parties,
the Appeal is taken up for final hearing and disposal.

3 The challenge in the Appeal is to the order dated 14 December
2023 passed by the City Civil Court rejecting the Notice of Motion
No.4331 of 2023 filed by the Appellant/Plaintiff for recall of the order

dated 10 November 2023 by which the suit has been dismissed for non-prosecution.

4 I have heard Mr. Thorat, the learned Counsel appearing for the Appellant, Mr. Sirsikar, the learned Counsel appearing for the Respondent-Municipal Corporation and Mr. Raje, the learned Counsel appearing for the Intervenor who has filed Chamber Summons for intervention in the L.C. Suit No.2112 of 2017.

5 After having considered the submissions canvassed by the learned Counsel appearing for the parties, it appears that on 25 September 2023 Plaintiff sought an adjournment when the Intervenor's Chamber Summons pending since the year 2017 was listed for hearing. The City Civil Court granted adjournment subject to payment of costs of Rs.3,000/- to the Intervenor. When the Suit and the Chamber Summons were listed on 10 November 2023, the Advocate appearing for the Plaintiff made a statement that he did not have instructions to proceed with the suit. The costs directed to be paid by order dated 25 September 2023 were apparently not paid. Considering the conduct of the Plaintiff in not paying the costs and as well as the statement made by the Advocate of the Plaintiff that he did not have instructions to proceed with the suit, the City Civil Court was not left any alternate but to dismiss the suit for default.

6 After dismissal of the suit on 10 November 2023, Plaintiff filed Notice of Motion No.4331 of 2023 immediately on 14 December 2023.

The Affidavit to the Notice of Motion was affirmed by the constituted attorney of the Plaintiff. The City Civil Court has proceeded to reject the Notice of Motion No.4331 of 2023 holding that no evidence was produced to demonstrate illness of the Plaintiff and that the constituted attorney of the Plaintiff had affirmed the Affidavit in support of the Notice of Motion.

7 In my view, considering the fact that the Notice of Motion for restoration of the suit was filed within three days of dismissal thereof, the City Civil Court ought to have restored the suit by imposing the costs on the Plaintiff for his conduct of violating the order dated 25 September 2023. Mere affirmation of Affidavit-in-support of Notice of Motion by constituted attorney could not have been a ground for rejection of the Notice of Motion. No doubt the Plaintiff has been extremely casual in prosecuting the suit in which he had secured an order of status quo in respect of demolition notices issued by the Respondent-Municipal Corporation. The Chamber Summons of the Intervenor is kept pending since the year 2017 on account of non-filing of the Reply by the Plaintiff and also on account his repeated non-appearance. In such circumstances, exemplary costs are required to be imposed on the Plaintiff for as a condition precedent for restoration of the suit.

8 Accordingly, I proceed to pass the following order:

i) Order dated 14 December 2023 passed by the City Civil Court in the Notice of Motion No.4331 of 2023 is set aside;

- ii) Notice of Motion No.4331 of 2023 be made absolute in terms of prayer clause (a) therein;
- iii) The *status quo* order granted by the City Civil Court on 29 July 2017 shall continue to operate till the disposal of the Notice of Motion for temporary injunction.
- iv) The City Civil Court is requested to expedite the hearing of the Notice of Motion and Suit. The Plaintiff shall not take any unnecessary adjournments and shall co-operate for early disposal of the suit.
- v) Plaintiff shall pay costs of Rs.20,000/- each to the Respondent-Municipal Corporation and to the Intervenor within a period of two weeks from today. This costs is over and above the costs of Rs.3,000/- directed to be paid by the City Civil Court vide order dated 25 September 2023;
- vi) Failure to pay the costs shall result in revival of the order dated 25 September 2023 passed by the City Civil Court.

9 With the above directions, the Appeal is allowed and disposed of.

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

(SANDEEP V. MARNE, J.)