

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 1055 OF 2023

Mr. Hemant Shankar Narayankar

....Original Plaintiff/

Appellant

V/s.

The Assistant Municipal Commissioner

and Anr.

....Orig. Defendant/

Respondents.

Mr. Jayesh Bhatt, for the Appellant.

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

CORAM : SANDEEP V. MARNE, J.

Dated : 22 December 2023.

P.C. :

1. **Admit.** With the consent of the parties, the Appeal is taken up for final disposal forthwith.
2. By the present Appeal, the Appellant challenges Order dated 7 December 2023 passed by the City Civil Court rejecting *ad-interim* relief in

favour of the Appellant-Plaintiff. The Appellant has instituted L.C. Suit No. 2877 of 2023 challenging the Notice dated 29 August 2022 issued under the provisions of Section 351 of the Mumbai Municipal Corporation Act, 1888 as well as the Speaking Order dated 27 October 2022. The Plaintiff-Appellant has filed Notice of Motion No. 4370 of 2023 seeking temporary injunction in the suit and by the impugned Order dated 7 December 2023, the City Civil Court has proceeded to refuse the *ad-interim* relief.

3. I have heard Mr. Bhatt, the learned counsel appearing for the Appellant and Ms. Tondwalkar, the learned counsel appearing for the Respondent-Municipal Corporation.

4. After considering the submissions canvassed by the learned counsel appearing for the parties and after going through the documents produced alongwith the Memo of Appeal, it is seen that after receipt of the Notice dated 29 August 2022, the Appellant submitted reply and *inter-alia* relied upon copy of summons issued by the Small Causes Court on 31 January 1961. The Municipal Corporation has proceeded to reject this document by recording a bizarre finding that the said document does not prove existence of the notice structure prior to the datum line of 1 April, 1962. The Municipal Corporation has also accused the Plaintiff of not producing copy of the permission issued by the Competent Municipal Authority for erection of the structure. There is no assertion on the part of the Municipal Corporation that the summons dated 31 January 1961 does not pertain to the suit structure. Though the document is dated 31 January 1961, *prima-facie* shows existence of the structure as on 31 January 1961, the

designated officer of the Municipal Corporation has erroneously recorded that the suit summons does not prove existence of the structure prior to the datum line of 1 April 1962. Further contradictory finding recorded in the order is about failure to produce permission from the Competent Authority for erection of the structure. Once the existence of the structure is proved prior to the datum line, it is incomprehensible as to why a development permission is required to be produced before the Municipal Corporation.

5. It appears that the Plaintiff did not invite the attention of the City Civil Court to the copy of the summons dated 31 January 1961. If the said summons indeed pertains to the suit structure, the Appellant-Plaintiff may be in a position to demonstrate existence of the suit structure prior to the datum line. In that view of the matter, an opportunity needs to be given to the Appellant to rely upon the said summons dated 31 January 1961 and such other documents as are considered necessary by the Plaintiff.

6. The Appeal is accordingly **disposed of** by setting aside the Order dated 7 December 2023. There shall be *ad-interim* injunction in favour of the Appellant-Plaintiff in favour of prayer clause (a) during decision of Notice of Motion No. 4370 of 2023, which shall be decided by the City Civil Court on its own merits, uninfluenced by any of the observations made by this Court in the present Order. The Plaintiff shall co-operate with the City Civil Court for expeditious disposal of the Notice of Motion without seeking any unnecessary adjournments. The Plaintiffs shall file an additional Affidavit alongwith additional documents before the City Civil Court on/or before 15 January 2024. The City Civil Court shall make an endeavor to

decide the Notice of Motion by 29 February 2024. With the above directions, the Appeal is **disposed of**. With disposal of the Appeal, the Interim Application stands disposed of.

SANDEEP V. MARNE, J.

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