

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Appeal from Order No.77 of 2024

With

Interim Application No.840 of 2024

In

Appeal from Order No.77 of 2024

Henry Joquim @ Ligory D'souza ... Appellant.

Vs.

Municipal Corporation of Gr.Mumbai Respondent.

Mr Shriram Kulkarni, Advocate a/w Akash Kotecha i/b Law
Supremus for appellant.

Ms Smita V. Tondwalkar for respondent/MCGM.

Coram: R. N. Laddha, J.

Date : 23 January 2024.

P.C. :-

This appeal is on today's board on account of a praicepe moved by the learned Counsel for the appellant for urgent listing on the ground that the respondent/corporation sought to take action of removal of the suit structure. Accordingly, as per the request of the learned Counsel for the appellant, the appeal is taken up for hearing.

2. Mr Shriram Kulkarni, the learned Counsel for the appellant

submits that as the appellant received a notice from the respondent/corporation u/s 314 of the MMC Act, the appellant, through his advocate submitted relevant documents to the respondent/corporation. However, the corporation did not consider the same. The appellant was, therefore, constrained to file the suit bearing LC Suit No.608 of 2012. After filing the suit, the appellant filed an application with the respondent/corporation to decide eligibility of the appellant for alternate accommodation. By an order dated 22.12.2023, the respondent/corporation treated the structure as unauthorised and directed the appellant to remove the same, failing which, it shall be demolished within 15 days. The appellant once again through his Advocate submitted an application on 29.12.2023 to the corporation to re-consider the case of the appellant for alternate accommodation, in view of census receipt of 2000. This was also not considered by the corporation which resulted in filing of notice of motion before the trial Court. The learned trial Court, however, refused ad-interim relief without taking into consideration all these aspects.

3. Ms Tondvalkar, the learned Counsel for the respondent/Corporation submits that the appellant did not produce relevant documents to show that the structure was authorised, in response to their notice.

4. The present appeal is filed challenging order dated 9.1.2024,

refusing ad-interim relief to the appellant/plaintiff in Notice of Motion No.59 of 2024 in LC Suit No.608 of 2012 and the respondent/corporation is yet to file its reply to the notice of motion.

5. Considering the nature of the dispute involved in the present appeal, instead of deciding correctness of the impugned order, it would be appropriate that the learned trial Court shall consider and decide the notice of motion No.59 of 20024 in LC Suit No.608 of 2012, finally. In view of this, the respondent/corporation is directed to file affidavit-in-reply to the notice of motion within three weeks from today, in the trial Court. The appellant/plaintiff shall file a rejoinder, if any, within two weeks thereafter with an advance copy to be served on the other side. The learned trial Court is requested to expedite the hearing of the notice of motion and decide it preferably within two weeks thereafter. Until the notice of motion is disposed of, the parties shall maintain the *status-quo*.

6. Accordingly, the instant appeal from order stands disposed of. The pending application also stands disposed of. Needless to state that this Court has not examined the merits of the case and all contentions of both the parties are left open.

[R. N. Laddha, J.]