

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

FIRST APPEAL NO.1910 OF 2024

D. M. Enterprise, Mumbai

... Appellant

V/s.

The Municipal Corporation of Greater Mumbai

... Respondent

**WITH
INTERIM APPLICATION NO.15534 OF 2024
IN
FIRST APPEAL NO.1910 OF 2024**

Mr. Suneel Mogre for the Appellant.

Ms. Pallavi Khale for the Respondent-MCGM.

CORAM : ARIF S. DOCTOR, J.

DATE : 13TH DECEMBER 2024

P.C. :

1. The captioned First Appeal, by consent, is taken up for final disposal at the stage of admission itself.

2. The First Appeal impugns the Judgment and Order dated 11th January 2024 (*'Impugned Judgement'*) passed by the City Civil Court, Mumbai by which the Plaintiff's Suit has been dismissed.

3. Mr. Mogre, Learned Counsel appearing on behalf of the Appellant has submitted that though the Advocates for the Plaintiff were absent on the date on which the Impugned Judgement was passed, the Trial Court proceeded to dismiss the Suit on merit. Mr. Mogre submitted that the matter being part heard, the Trial Court ought not to have dismissed the Suit on merits for non-appearance of the Advocates of the Appellants. In support of his contention, he placed reliance upon the judgement of the Hon'ble Supreme Court in the case of *Abdur Rahman & Others vs. Athifa Begum & Others*¹ and unreported judgement of the Hon'ble Supreme Court in the case of *Benny D'Souza & Ors. vs. Melwin D'Souza & Ors.*². Basis this, he submitted that the Impugned Judgement be set aside and the Suit be heard and disposed of on merits.

4. Ms. Khale, Learned Counsel appearing on behalf of the Respondent-MCGM submits that the Suit itself was not maintainable as there is bar in law for filing of the Suit. In such circumstances, the statutory remedy for the party aggrieved is to avail Section 47 of the Maharashtra Regional and Town Planning Act, 1966. She thus submitted that the Suit was correctly dismissed.

1 (1996) 6 SCC 62

2 Order dated 24th November 2023 in SLP(C) No.23809 of 2023

5. Having due regard to the submissions made and the judgements in the cases of *Abdur Rahman & Others* (supra) and *Benny D'Souza & Ors.* (supra), in the facts of this case, the dismissal of the Suit on merit was unjustified.
6. Thus, the First Appeal is allowed.
7. The Impugned Judgement is set aside accordingly.
8. The Suit is remanded back for consideration.
9. The Trial Court shall hear and dispose of the Suit uninfluenced by the observations made in this order.
10. Interim Applications, if any, shall also be disposed of accordingly.

(ARIF S. DOCTOR, J.)