

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

**FIRST APPEAL NO.1956 OF 2024
WITH
INTERIM APPLICATION NO.15716 OF 2024
IN
FIRST APPEAL NO.1956 OF 2024**

Ashok Sakharam Jadhav ... Appellant

V/s.

The Municipal Corporation of GR. Mumbai ... Respondent

Mr. P. J. Thorat i/b Aditi Naikare for Appellant.

Ms. Pallavi Khale for Respondent-MCGM.

CORAM : ARIF S. DOCTOR, J.

DATE : 13th DECEMBER 2024

P.C. :

1. I have heard learned Counsel for the Appellant who points out that the Appellant is aggrieved by the judgment dated 16th November 2024 passed by the City Civil Court, Mumbai in Long Cause Suit No.1909 of 2016. The Suit was filed impugning a notice issued under Section 351 of the Mumbai Municipal Corporation Act 1888 ("**MMC Act**"), by which the structure of the Appellant was declared to be unauthorized.

2. Learned Counsel for the Appellant points out that the Appellant is the owner of three structures all situated at conjointly and have received three

identical notices. Thus, he had filed three identical Suits challenging the said notices to point out that in two of the Suits, the Plaintiff had succeeded. However, in the said Suit, the City Civil Court, Mumbai was pleased to dismiss the same essentially on the following grounds:

“21] The payment receipts relied by the plaintiff below exhibit-24 are in respect of structure known as Sai Enterprises having area 220 sq. ft. It is important to note here that the impugned notice has been issued to structure known as Apsara Tea House, J. V. Road and photo-pass below exhibit-23 and payment receipts exhibit-24 are in respect of structure namely Sai Enterprises, Udani Plot, J. P. Road. Thus, address in photo-pass exhibit-23 and address of notice structure is totally different. The area of notice structure is 148 sq. ft. approximately and area of structure in photo-pass exhibit-23 is 220 sq. ft. Further, in the photo-pass exhibit-16 issued in the name of Sakharam Jadhav area of structure is 140 sq. ft. Thus, area of structure censused in 1976 and area mentioned in photo-pass issued in 2008 exhibit-23 are totally different. So also address and area mentioned on photo-pass and notice structure is also totally different. In the circumstances, I hold that Designated Officer has rightly held that photo-pass relied by the plaintiff is not in respect of suit structure.”

3. Learned Counsel has tendered a compilation for convenience of the Court and therefrom has pointed out that in respect of the said structure,

the Appellant's father had been issued a photo-pass to show the Pitch/Hut number N 24 1/1A as also a certification of this censused carried out in the year 1990, which reflects that the said structure is existed on that date. He submits that the Trial Court was in error in placing reliance upon the fact that the name of the structure is in question has since changed since changed from Sai Enterprises to Apsara Tea House. However the Trial Court has failed in holding on account of change in name and the structure was not in existence. It is thus the present First Appeal has been filed. Having due regard to the submissions made, I find an arguable case to admit the First Appeal has been made out.

3. Hence, **Admit**.

4. Call for record and proceedings. Printing is dispensed with. Hamdast is permitted.

5. Appellant to file private paper-book within a period of 3 months from today.

6. Bhatta charges, if any, to be paid within a period of two weeks from today.

7. At this stage, learned Counsel also presses for interim relief in terms of prayer clause (a) of the interim application. He invites my attention to the ad-interim order dated 19th August 2016 which was later confirmed on 15th October 2022. Thus and continued by the Trial Court. I find that the Appellant has made out a case for the grant of ad-interim relief. Hence, the

interim application is allowed in terms of prayer clause (a), which read thus:

“ a. That pending the hearing and final disposal of the present First Appeal the Respondents, their Officers, servants, agents, contractors and/or any other person/s acting on their behalf be restrained by an order of injunction of this Hon’ble Court from demolishing, removing and/or damaging any part of the suit premises being Shop No.1, CNXC023-1/1C, Apsara Tea House (Sai Enterprise), Near Laxmi Shopping Center, J.V. Road, Ghatkopar (West), Mumbai-400 086 in pursuance to the Notice bearing No.DO III(AEBF N-Ward) D-174/351-117/120 dated 25/05/2016 and Order dated 03/08/2016 passed under Section 351 of the Mumbai Municipal Corporation Act, 1888.”

(ARIF S. DOCTOR, J.)