

Iresh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 825 OF 2024

Sunni Muslim Chhota Qubrastan

.....Appellant

Vs.

Municipal Corporation of Greater Mumbai
and ors

.....Respondents

Mr. Asif Shaikh for the appellant

Ms. Sapna Khobragade a/w Mr. Rajesh Khobragade for respondent
no. 1

Mr. Om Suryawanshi for BMC

Mr. Nikhil Kulkarni J.E. (B & F) 'E' Ward

IRESH
MASHAL

CORAM : GAURI GODSE, J.

DATE : 27th JANUARY 2025

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ORDER:

1. Learned counsel appearing for the appellant submits that the plaintiff had filed Notice of Motion No. 1696 of 2022. He submits that since the ad-interim relief was refused in the said notice of motion, the plaintiff had preferred Appeal From Order in this Court. The appeal was dismissed on 26th September 2023. The order dismissing the appeal is at page 285 of the present compilation. He, thus, submits that in view of dismissal of earlier appeal i.e. Appeal From Order No.

538 of 2022, refusal of ad-interim relief as per Notice of Motion No. 1696 of 2022 stood confirmed. He submits that the said notice of motion was not argued by the plaintiff and the plaintiff filed fresh notice of motion i.e. Notice of Motion No. 4343 of 2024. He points out the prayers in both the notice of motions. He submits that in view of pendency of earlier notice of motion for the same suit structure i.e. Shop No. 18A, the second Notice of Motion No. 4343 of 2024 could not have been entertained by the City Civil Court. He, further submits that inspite of refusal of ad-interim relief being confirmed by this Court, City Civil Court has granted protection by the impugned order in respect of the suit structure i.e. Shop No. 18A.

2. I have perused the prayers of both notice of motions. Learned counsel for the appellant is right in raising the objection.

3. After arguing the appeal for some time, learned counsel appearing for the plaintiff on instructions submits that the plaintiff be permitted to withdraw Notice of Motion No. 4343 of 2024 with liberty to argue the main Notice of Motion No. 1696 of 2022. Learned counsel for the plaintiff also seeks liberty to file appropriate application for amending the suit and Notice of Motion No. 1696 of 2022.

4. Leave granted as prayed with liberty to the plaintiff to argue Notice of Motion No. 1696 of 2022 and file appropriate application for amendment as permissible in law.
5. In view of the aforesaid, present Appeal From Order is allowed by passing the following order:

ORDER

- I. The plaintiff is permitted to withdraw Notice of Motion No. 4343 of 2024 with liberty to argue Notice of Motion No. 1696 of 2022.
- II. The plaintiff is also at liberty to file application for amendment as permissible in law.
- III. It is clarified that if any such application for amendment is filed, the defendants would be at liberty to oppose the same.
- IV. All contentions of all parties are kept open.
- V. In view of withdrawal of Notice of Motion No. 4343 of 2024, the impugned order dated 26th September 2024 passed in Notice of Motion No. 4343 of 2024 is quashed

and set aside.

6. Appeal from order is disposed of in aforesaid terms.

[GAURI GODSE, J.]