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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 877 OF 2024
WITH
INTERIM APPLICATION NO. 15427 OF 2024**

Rajvadan Dattaram More and Another ... Appellants

Vs.

Municipal Corporation of ... Respondents

Greater Mumbai through

G-South Ward and Another

Mr. Jaydeep Raut i/b. Ms. Kalpana Pardeshi for the Appellants.

Mr. Om Suryawanshi for Respondent-BMC.

Mr. Raj Patel i/b. Mr. Mohan Patel for Respondent No.2.

CORAM : GAURI GODSE, J.

DATE : 25th FEBRUARY 2025

ORDER :

1. Heard learned counsel for the parties. This appeal is preferred by the plaintiffs to challenge the refusal to grant interim injunction. In the suit the plaintiffs are challenging declaration of ineligibility of M/s. More Ru Prints ("More Prints"). The plaintiffs claim to be partners of More Prints. For want of any supporting documents the City Civil Court has refused to grant any protection in respect of the suit premises.

2. Learned counsel for the appellants submits that the appellants being partners of More Prints are entitled for alternate

accommodation in lieu of the suit premises. He submits that though the documents were produced on record to show existence of the suit premises prior to the datum line, the appellants are held ineligible by the corporation. He submits that sufficient documents are produced by the appellants to indicate that the appellants are in possession of the suit premises prior to the datum line and thus during the pendency of the suit the appellants would be entitled to protection.

3. Learned counsel for the corporation submits that the ineligibility decided by the corporation is with regard to More Prints and not individually of the plaintiffs. He submits that for want of any document to indicate that More Prints was in existence prior to the datum line i.e. 1st January 2000, More Prints is held ineligible. He further submits that defendant no. 2 is a municipal tenant and is held eligible for alternate accommodation.

4. Learned counsel for defendant no. 2 submits that defendant no. 2 is a municipal tenant. He submits that one Deveshwar Sharma was employee of defendant no. 2. He submits that Deveshwar Sharma had illegally occupied the premises. He submits that Small Causes Court has already decreed the suit in favour of defendant no. 2.

5. Learned counsel for the appellants submits that the suit was decreed ex-parte and application for condonation of delay in applying for setting aside ex-parte decree is allowed and the application is still pending before the Small Causes Court.

6. I have perused the papers of the appeal. There is no dispute that defendant no. 2 is the original municipal tenant. The averment in the plaint relied upon by the learned counsel for the appellants pertains to partnership firm of Deveshwar Sharma. The plaintiffs claim to be partners of More Prints. The plaintiffs eligibility was never a question before the corporation. Since the suit premises was occupied by More Prints, the eligibility of More Prints is decided by the Corporation based on the documents submitted on behalf of More Prints. The present appellants have filed the suit in their individual capacity.

7. When the plaintiffs did not claim any independent rights in their individual capacity, the reasons recorded by the City Civil Court in refusing grant of interim protection cannot be faulted. The ownership of the land is with the corporation. The documents produced on record before the City Civil Court indicates that the corporation has followed the due procedure for deciding eligibility. There is nothing shown to indicate any prima facie rights so far as

the present appellants are concerned. Thus, the reasons recorded by the City Civil Court examines the plaintiffs' case with reference to the prayers in the suit, which seeks declaration that the plaintiffs are eligible slum dwellers. Thus, in the absence of any prima facie documents in favour of the plaintiffs, I see no reason to interfere in the impugned order.

8. The basic principles for grant of interim injunction which is discretionary relief is not satisfied by the plaintiffs.

9. The appeal is devoid of any merits. Hence, the appeal is dismissed.

10. In the event plaintiffs succeed in their suit, they would always be entitled to seek appropriate reliefs based on their eligibility, if any, decided in the suit.

11. There is no reason to grant any interim protection to the plaintiffs in the absence of any prima facie right shown in favour of the plaintiffs.

12. The appeal is therefore dismissed. In view of dismissal of the appeal, interim application is dismissed as infructuous.

[GAURI GODSE, J.]