

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 547 OF 2025  
WITH  
INTERIM APPLICATION NO. 12539 OF 2025  
IN  
APPEAL FROM ORDER NO. 547 OF 2025

Moshin Salim Chunawala

.. Appellant

**Versus**

The State of Maharashtra & Ors.

.. Respondents

.....  
Mr. Anil D'Souza a/w Ms. Anita Naik, Advocates for Appellant.  
Mr. Dinesh Haldankar, AGP for State.

.....  
CORAM : MILIND N. JADHAV, J.  
DATE : JANUARY 17, 2026.

**P.C.:**

**1.** Heard Mr. D'Souza, learned Advocate for Appellant and Mr. Haldankar, learned AGP for Respondents - State.

**2.** The present Appeal From Order impugns order dated 29.03.2025 in Notice of Motion No. 688 of 2018 passed by the Adhoc Additional Session Judge, City Civil Court, Dindoshi, Borivali Division whereby the Trial Court rejected the Notice of Motion filed by the Appellant. Appeal From Order and Interim Application is filed on 07.04.2025. By consent of parties Appeal From Order is heard finally.

**3.** Briefly stated, the present Appeal From Order arises out of recovery proceedings initiated by Respondents towards police

protection charges due and payable by Appellant. Appellant is a businessman engaged in the business of construction, having ongoing construction projects at Vasai, Nallasopara, Virar and Malad.

**3.1.** It is Appellant's case that in the year 2012, he received threatening phone calls from an underworld criminal demanding a sum of Rs.50,00,000/- failing which he was threatened with death. Appellant immediately lodged written complaint with the concerned police authorities. Despite further threatening calls received by him in September 2013, no effective action was taken by the authorities on his complaint.

**3.2.** It is Appellant's case that in May 2014, he was provided with police protection by Respondents pursuant to an administrative decision taken by the Police authorities to provide protection to persons who had received threats from the said underworld. Appellant was thus provided with police protection thereafter. It is Appellant's case that he was not informed that the said police protection provided to him was chargeable.

**3.3.** Appellant states that on 29.11.2014, while recording his statement, he categorically informed the authorities that the police protection, if it is to be continued, should be provided to him without payment / charges.

**3.4.** It is Appellant's case that on 05.03.2015 and 26.06.2015, he

received bills from the office of the Commissioner of Police, Mumbai, demanding charges towards Police protection provided to him. By letter dated 26.12.2015, Appellant objected to the said bills, contending that he was never informed that the Police protection was chargeable.

**3.5.** It is Appellant's case that without responding to his objections, Respondents issued a Demand Notice dated 22.11.2016 through the Tahsildar, Andheri, seeking recovery of Rs.8,28,795/- under Section 174 of the Maharashtra Land Revenue Code, 1966 (for short '**MLR Code**').

**3.6.** Upon inquiry, Appellant was informed that the demand pertained to Police protection charges. Thereafter, by letter dated 01.02.2017 Appellant made representations to the Commissioner of Police, Senior Police Inspector, Collector, Tahsildar and the Ministry of Home Affairs contending that Police protection was provided to him *suo motu* and that he had never applied for paid Police protection and no communication regarding charges to be paid by him towards Police protection was ever informed to him.

**3.7.** It is Appellant's case that despite his representations, no response was received by him. On 13.02.2017, Appellant received undated notice of *lis pendens* from the Tahsildar. Appellant sought clarification by letter dated 27.02.2017 followed by reminders dated

10.05.2017 and 03.07.2017 which also remained unanswered.

**3.8.** Thereafter, Appellant approached the Ministry of Home Affairs by letter dated 24.08.2017, followed by a reminder dated 25.09.2017 seeking a hearing in the matter.

**3.9.** Simultaneously, Appellant filed Application under the Right to Information Act, 2005 dated 28.09.2017 seeking details regarding grant of Police protection to him. The response furnished to him merely enclosed copy of Government Resolution dated 03.01.2000 and Circular dated 24.01.2008.

**3.10.** As information supplied was incomplete, Appellant preferred a First Appeal and thereafter a Second Appeal. During the hearing of Second Appeal, Respondents failed to produce any written order of the Protection Committee sanctioning paid Police protection to him and stated that the decision was allegedly taken orally.

**3.11.** It is Appellant's case that on 01.01.2018, the Tahsildar sought Appellant's bank details through his housing society, pursuant to which Appellant's bank account with the Bharat Co-operative Bank (Mumbai) Ltd. was frozen.

**3.12.** In the aforesaid circumstances, Appellant was constrained to file Civil Suit No.458 of 2018 challenging the Demand Notice, recovery proceedings and consequential actions contending that the

Police protection provided to him was not paid Police protection and the demand raised was therefore illegal and unsustainable in law.

**3.13.** By order dated 29.03.2025, learned Trial Court rejected Notice of Motion No.688 of 2018 filed by Appellant. Being aggrieved, with the order dated 29.03.2025, Appellant filed present Appeal From Order before this Court.

**4.** Mr. D'Souza, learned Advocate for Appellant would submit that the impugned Order dated 29.03.2025 passed in Notice of Motion No.688 of 2018 in Suit No.458 of 2018 by the learned Ad-hoc Additional Sessions Judge, City Civil Court, Dindoshi, Borivali Division, is illegal, erroneous and unsustainable in law, whereby the Notice of Motion filed by Appellant came to be rejected.

**4.1.** He would submit that the Trial Court has failed to consider and apply the binding ratio laid down by this Court that mere demand does not create liability and recovery cannot be initiated without prior adjudication in the case of *Samani Decorators Pvt. Ltd. and Anr. vs. Collector, Mumbai City and Ors.*<sup>1</sup> as also the decision of this Court in the case of *Maqsood, son of Maqbool Chohan and Ors. vs. State of Maharashtra and Ors.*,<sup>2</sup> rendering the impugned order unsustainable.

**4.2.** He would submit that the learned Trial Court has completely failed to appreciate the settled position of law that Demand Notice

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<sup>1</sup> 2019 SCC OnLine Bom. 9858

<sup>2</sup> Writ Petition No.804 of 2002 – Decided on 14.02.2018

dated 08.04.2015 issued by the Tahsildar under Section 267 of the MLR Code seeking recovery as arrears of land revenue must necessarily be preceded by adjudication and crystallization of liability. He would submit that unless there is a prior determination as to whether the amount is due and payable and, if so, the quantum thereof, no recovery proceedings can be initiated as arrears of land revenue.

**4.3.** He would submit that admittedly no adjudication or determination of liability was ever undertaken prior to issuance of the impugned Demand Notice and therefore the said notice is *ex facie* bad in law. He would submit that the learned Trial Court has failed to consider the law laid down by the Supreme Court that recovery proceedings under revenue laws are impermissible unless the liability sought to be recovered is crystallized pursuant to a lawful adjudication by a competent authority in the case of *State of Kerala vs. V.R. Kalliyankutty*<sup>3</sup>, which is also followed by the Division Bench of this Court in the case of *Maqsood, son of Maqbool Chohan (supra)*.

**4.4.** He would submit that the impugned order has been passed in complete ignorance of the settled principle that without determination and crystallization of liability, there cannot be recovery akin to recovery of arrears of land revenue under the provisions of the MLR Code.

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<sup>3</sup> (1999) 3 SCC 657

**4.5.** He would submit that there is no enabling provision either under any statute or executive instruction permitting recovery of alleged Police Protection Charges as arrears of land revenue. He would submit that even in the Written Statement filed by the State of Maharashtra, no such statutory provision has been pointed out and therefore the impugned Demand Notice and all subsequent proceedings under the MLR Code are without jurisdiction and bad in law.

**4.6.** He would submit that on merits the learned Trial Court has failed to consider that when Appellant initially applied for seeking Police protection due to threats received by him from the underworld, no protection was granted to him. He would submit that subsequently after considerable lapse of time, the State of Maharashtra, on its own volition, provided Police protection to Appellant without disclosing any terms or conditions and without indicating that he was required to reimburse the charges for the police protection.

**4.7.** He would submit that a sudden demand was thereafter issued to the Appellant without adjudication of the liability and without following the principles of natural justice and therefore the impugned Demand Notice itself is illegal and unsustainable.

**4.8.** He would submit that final hearing of the Notice of Motion concluded on 19.10.2024 and the matter was closed for orders.

Thereafter, the matter was listed on Board on 20.11.2024, 20.12.2024, 18.01.2025, 15.02.2025 and 01.03.2025 without pronouncement of any order and ultimately, the impugned order was passed only on 29.03.2025, i.e., after a gap of more than five months.

**4.9.** He would submit that due to the prolonged gap between conclusion of arguments and pronouncement of the order, the learned Trial Court failed to consider the factual and legal submissions advanced on behalf of Appellant including the binding judgments cited. He would submit that such conduct violates principles of natural justice as deprecated by the Supreme Court in the case of *Anil Rai Vs. State of Bihar* <sup>4</sup> and *Ratilal Jhaverbhai Parmar and Ors. vs. State of Gujarat and Ors.*<sup>5</sup>.

**4.10.** He would submit that despite repeated requests, Respondents failed to place on record any order of the Protection Committee clarifying whether the police protection provided to the Appellant was paid or unpaid.

**4.11.** He would submit that Appellant never received any communication or confirmation from Respondents stating that the Police protection facility provided to him was chargeable.

**4.12.** He would submit that the police protection provided to him by the authorities was at their own discretion due to threat calls

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<sup>4</sup> (2001) 7 SCC 318

<sup>5</sup> 2024 SCC OnLine SC 2985



received by him from underworld don Ravi Pujari in the year 2014 without any formal request made by Appellant.

**4.13.** He would submit that police protection was provided to the Appellant for a period of four months without following the prescribed procedure and without obtaining consent of the Appellant. He would submit that the statement of the Appellant dated 29.11.2014 clearly records that police protection should be provided to him only if it is not chargeable.

**4.14.** He would submit that the letter dated 15.02.2018, produced by Respondents Authorities before the Trial Court specifically states that the request of Appellant for waiver of police protection charges was under consideration and pending which fact has been completely ignored by the learned Trial Court. He would submit that there exists no written communication or order indicating that the protection provided to the Appellant was a paid facility.

**4.15.** He would submit that during the year 2014, Appellant was not earning and was financially incapable of bearing any such police protection charges, which is evident from contemporaneous communications. He would submit that despite repeated letters addressed by the Appellant between 2015 and 2018 to the Respondents, they failed to provide any response confirming that the police protection provided to him was a paid service.

**4.16.** He would submit that the Respondents suppressed the material fact that Appellant had clearly stated that protection should be provided only if it was provided free of cost and despite this, they neither clarified the nature of the protection nor disclosed any charges payable for the same.

**4.17.** He would submit that the Appellant became aware of the alleged paid nature of the police protection provided to him only in 2015, after several months of police protection provided to him and even thereafter Respondents admitted by their letter dated 15.02.2018 that his waiver request was pending, rendering the impugned recovery proceedings illegal.

**4.18.** He would submit that during subsistence of the *status quo* order dated 16.02.2018, Respondents Authorities issued a demand notice dated 13.09.2024 seeking recovery of Rs.18,75,735/- which was received by Appellant on 13.12.2024 which would amount to contempt of Court. Copy of this notice is not appended. Statement to this effect is made in ground (u) on page No. 9 of Appeal From Order. Copy of this notice is not appended. Statement to this effect is made in ground (u) in page No.9.

**4.19.** He would submit that the learned Trial Judge failed to appreciate that Respondents have no equity in their favour and that the impugned order is unreasoned, arbitrary and passed without

proper appreciation of pleadings and material on record.

**4.20.** He would submit that the impugned order has been passed on the basis of suppression, misrepresentation and deliberate withholding of material facts by Respondents / Authorities and it is therefore liable to be set aside.

**5.** *PER CONTRA*, Mr. Haldankar, learned AGP for State would draw my attention to the Affidavit filed by Mr. Raju Kasbe (ACP), Protection Branch – 1 to oppose the Appeal From Order and the Interim Application. He would submit that the Appellant/original plaintiff had approached D.N. Nagar Police Station seeking police protection on the ground that he had received a threatening call from the Ravi Pujari gang demanding an amount of Rs.50 lakhs. He would submit that the said Application was forwarded to the Deputy Commissioner of Police, Zone-9 for consideration. He would submit that on 19.12.2012, a report / suggestion was received from DCP Zone-9 recommending paid police protection to be provided to the Appellant in view of the threat perception. The said communication is annexed as Exhibit-A to Appeal From Order.

**5.1.** He would submit that thereafter Threat Perception Reports (for short “**TPRs**”) were called for from the Crime Branch, Special Branch and Zone-9. He would submit that while two TPRs were negative, the report of Zone-9 was positive for providing protection to

the Appellant on paid basis. He would submit that the Protection Review Committee however resolved to reject the demand for protection and based on the said recommendation, the Police Commissioner, Mumbai therefore denied protection to Appellant. He would submit that the said decision was communicated to the Appellant by letter dated 01.06.2013, which is appended as Exhibit-B to the Appeal From Order.

**5.2.** He would submit that DCP Zone-9 address letter dated 02.09.2014 to ACP Protection Branch-1 stating that as Appellant is receiving threats D.N. Nagar Police Station was providing police protection free of cost however due to oncoming festival period they are unable to continue providing police protection and hence ACP Protection Branch-1 is to provide chargeable police protection to Appellant.

**5.3.** He would submit that as per the internal noting maintained by the office, police protection was provided to the Appellant from 23.09.2014 and that the Police Commissioner, Mumbai, by remark dated 22.12.2014, categorized the same as “paid protection”. He would submit that the relevant noting is confidential and can be produced before the Court if called upon to do so. He would further submit that the said protection was provided on payment basis.

**5.4.** He would submit that during the said period, on 29.11.2014,

Appellant recorded his statement stating that protection should be provided if the police department finds that his life is under threat and that such protection should be provided to him free of cost.

**5.5.** He would submit that bill dated 05.03.2015 was raised for the period from 23.09.2014 to 28.12.2014 for an amount of Rs.6,40,766/-.

**5.6.** He would submit that upon receipt of the said bill, Appellant addressed a letter dated 04.04.2015 (Inward No. 558/2015) stating that he had sought protection free of cost and requested that earlier charges be waived and that he be charged prospectively. He would submit that thereafter another bill dated 26.06.2015 for an amount of Rs.8,28,790/- was issued.

**5.7.** He would submit that thereafter police protection to Appellant was discontinued from 16.05.2015 as per the directions of the Police Commissioner, Mumbai, and the same was communicated to DCP Zone-9 by letter dated 21.05.2015.

**5.8.** He would submit that Appellant addressed multiple representations dated 20.05.2017, 29.07.2017, 22.08.2017 and 03.11.2017 seeking waiver or cancellation of the police protection charges. He would submit that the said requests were rejected by the Deputy Commissioner of Police (Protection and Security) by communications of corresponding dates, annexed as Exhibit-I (Colly)

to the Appellant.

**5.9.** He would submit that the bills raised on the Appellant were forwarded to the Collector, Mumbai Suburban District for recovery by letters dated 02.05.2016 and 07.12.2015. He would submit that pursuant thereto, a Demand Notice dated 22.11.2016 was issued which came to be challenged by the Appellant by filing Suit No.458 of 2018 along with Notice of Motion No. 28 of 2018. He would submit that the Notice of Motion is rejected by the Trial Court, leading to the present Appeal From Order. He would further submit that Appellant has deliberately not challenged the bills dated 05.03.2015 and 26.06.2015 but has challenged only the Demand Notice dated 22.11.2016 to avoid payment of Court fees and further the Suit is barred by limitation as also for want of issuance of statutory notice under Section 80 of the Code of Civil Procedure, 1908 (for short 'CPC').

**5.10.** He would submit that by an undated letter received on 04.04.2015, Appellant sought waiver of earlier police protection charges and requested police protection only during daytime hours. He would submit that the said letter clearly and *prima facie* demonstrates that Appellant, being a builder, is financially capable of paying police protection charges. He would place reliance on the Circular dated 04.01.2018, particularly on paragraph 13 thereof which

mandates payment of police protection charges.

**5.11.** He would further submit that the Circular dated 24.01.2008, relied upon by the Appellant, if read in its proper context, particularly Clauses 3 and 4 thereof clarifies that even Members of Parliament, Members of Legislative Assembly and Government servants are required to pay police protection charges if the protection is provided to them beyond their official duties.

**5.12.** He would submit that Section 47 of the Maharashtra Police Act, 1951 expressly provides that police protection is to be provided on payment basis.

**5.13.** He would submit that Appellant is a builder and is / was fully aware that the police protection provided to him was provided on paid basis and that his case was squarely covered under paragraph 13 of the Circular dated 04.01.2018. He would further submit that granting free police protection would burden public funds and taxpayers' money.

**5.14.** He would submit that on the aforesaid grounds the Appeal From Order be dismissed and Appellant be directed to pay the amount in the bill dated 05.03.2015 alongwith interest.

**6.** I have heard Mr. D'Souza, learned Advocate for Appellant and Mr. Haldankar, learned AGP for the State and with their able

assistance perused the record of the case. Submissions made by the learned Advocates at the bar have received due consideration of the Court.

**7.** At the outset it is seen that Appellant had taken out a Notice of Motion before the Trial Court seeking interim reliefs including protection against coercive recovery / enforcement, pending adjudication of the Civil Suit. It is noted that the Trial Court by the impugned order dated 29.03.2025 rejected the Notice of Motion primarily on the ground that no *prima facie* case for grant of interim relief was made out at that stage.

**8.** In the Appeal From Order before me, it is seen that the parties are seriously at variance on foundational and material facts including whether the police protection provided to Appellant was free of cost or on a paid basis, whether the Appellant was informed or had consented to any chargeable Police protection, the legality and basis of the bills raised, the time frame during which Police protection was provided, the nature and effect of correspondence exchanged between parties in relation thereto and the permissibility of the recovery proceedings initiated thereafter. These issues involve disputed questions of fact which cannot be conclusively determined at this stage merely on the basis of rival pleadings as the dispute between the



parties is already subject matter of a substantive Civil Suit, which is pending adjudication before the competent Trial Court. This Court, therefore, refrains from expressing any opinion on the merits of the rival claims so as not to prejudice either party's case in the pending proceedings.

**9.** Considering the pendency of the Civil Suit and in order to balance the equities between the parties, Adjudication cannot be done by this Court on the basis of the rival claims. Appellant has received Police security admittedly and hence onus is on him to prove in trial that he is not liable to pay for the same. Only if he proves, the burden will then shift on the State in rebuttal. If this Court decides the above issue merely on the basis of pleadings the Suit trial will become infructuous. Hence, this Court is of the view that no final adjudication in the present Appeal From Order or on the correctness of the order rejecting the Notice of Motion is warranted at this stage.

**10.** Accordingly, the Appellant is directed to deposit 25% of the disputed amount in the bill dated 26.06.2015 and original demand notice dated 22.11.2016 or furnish security of an equivalent value before the Trial Court within a period of 4 weeks from today. The said deposit shall be subject to the final outcome of the pending Civil Suit.

**11.** In view thereof the Trial Court is directed by this Court to proceed with the trial expeditiously and determine the same preferably

within 6 months from today.

**12.** Until the trial is determined, Respondent Nos. 5 and 6 i.e. Collector of Mumbai (Suburban) and Tahsildar Andheri shall not take any coercive steps against the Appellant with regard to the Demand Notice and for a further period of 2 weeks thereafter if the order is adverse to the Appellant - Plaintiff.

**13.** It is clarified that no opinion on merits, either with regard to the rejection of the Notice of Motion or the claims of the parties has been expressed by this Court. In the event if the Appellant succeeds in the Civil Suit, the amount so deposited by him shall be refunded along with interest as may be determined by the Trial Court in accordance with law. While determining the Suit, Trial Court shall not be influenced by the observations and findings in the impugned order as *prima facie* view is expressed and it shall determine the trial on evidence of the parties.

**14.** With the above directions and clarifications the Appeal From Order is disposed of. Interim Application is also disposed.

[ MILIND N. JADHAV, J. ]

Ajay

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