CNR NO.MHCC01-1/2018

IN THE COURT OF CITY CIVIL FOR GREATER BOMBAY AT BOMBAY

NOTICE OF MOTION NO.01 OF 2018
IN
L.C.SUIT NO.01 OF 2018

Abdul Samad Merchant ... Plaintiff

Versus

1. The Municipal Corporation of Greater Mumbai & Anr. ... Defendants

Coram : H.H.Shri Sanjay N. Yadav, Judge
(Court Room no. 05)
Date : 24th April, 2019.

Mr.Anand A. Pandey, advocate for plaintiff.

Mr.Pradeep Patil, advocate for defendant/BMC.

O R D E R

1. The Plaintiff by this Notice of Motion seeks temporary injunction restraining defendant from acting upon the notice dated 22/12/2017 issued under section 354 A of MMC Act and the order passed by the MMC on 28/12/2017.

2. The Plaintiff claims to be tenant of the suit premises. It is contended by the Plaintiff that the suit structure is in existence since 1960-61. It is stated that suit structure is assessed by the Municipal Corporation. The Plaintiff was carrying out tenantable repairs, the defendant issued notice u/s 354 A of MMC Act dated

22/12/2017. It is contended that, the mezzanine floor at the suit premise is existence since 1960-61. He was carrying out repairs of the suit structure including mezzanine floor. It is contended that notice was replied by the Plaintiff on 28/12/2017. Said reply was not considered and the defendant arbitrarily issued order dated 28/12/2017.

3. Defendant/Corporation contended that in inspection of suit premises, the Plaintiff was found carrying out unauthorized construction of mezzanine floor, therefore notice was rightly issued u/s 354 A of MMC Act. It is contended that Plaintiff had not replied notice order dated 28/12/2017 which was accordingly issued calling upon Plaintiff to demolish the mezzanine floor.

4. Heard learned advocate for Plaintiff and learned advocate for defendant.

5. In paragraph no.10 (B) of affidavit in reply filed by Defendant/Corporation, it is contended by the Corporation that the site under reference was inspected by the Officer of the Defendant/Corporation and was observed unauthorized construction of mezzanine floor was in progress and, therefore, by the notice dated 22/12/2017 called upon Plaintiff to stop execution of the work forthwith and on failure to produce the permission within 24 hours, would be removed or pulled down at the cost of Plaintiff.

6. Admittedly, from 22/12/2017 till 28/12/2017 no orders were issued in pursuance to the notice issued u/s 354 A of MMC Act to the Plaintiff. During this period, it is not clear as to what was the

stage of construction at the suit site.

7. It needs to be mentioned that the Plaintiff had replied the notice dated 22/12/2017 on 28/12/2017. The order pursuant to the notice u/s 354 A of MMC Act was issued on 28/12/2017. The order points out that the Plaintiff had not submitted any reply or any document to prove that the notice structure is authorized or the construction was with the permission of Executive Engineer of MCGM. The Plaintiff had relied upon his reply to the notice, it bears the stamp of the corporation indicating about its receipt by the corporation. It is also not the contention in the say of the defendant that the reply of the Plaintiff to the notice was filed after the issuance of order on the same day. The position which emerges is that inspite of their being reply of the Plaintiff, the same seems not considered by the corporation.

8. The Plaintiff had raised a triable issue in the suit. The suit structure therefore, also needs to be maintained in status quo.

9. It prima-facie appears that the order of the corporation is arbitrary and is passed without considering the reply of the Plaintiff. The Plaintiff had made out prima-facie case in his favour and the balance of convenience lies in favour of Plaintiff. The Plaintiff would put irreparable loss, if the temporary injunction is refused in result the following order :

ORDER

1. The notice of motion No.01/2018 is made absolute.

2. The defendant/corporation is restrained by temporary

injunction from acting upon the notice u/s 354 A of MMC Act dated 22/12/2017 and the order dated 28/12/2017 in respect to the suit structure.

3. Notice of Motion stands disposed off.

(Sanjay N. Yadav)
Judge,
City Civil Court, Mumbai.

Dictated on : 24.04.2019
Transcribed on : 24.04.2019
Signed by HHJ on : 02.05.2019

"CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER."
UPLOAD DATE AND TIME : 02.05.2019 At 05.35 pm
NAME OF CLERK-TYPIST : Mrs. P. L. Parab

Name of the Judge (With Court Room no.)	**HHJ Shri. S. N. Yadav C.R. No.05**
Date of Pronouncement of JUDGMENT/ORDER	**24.04.2019**
JUDGMENT/ORDER signed by P.O. on	**02.05.2019**
JUDGMENT/ORDER uploaded on	**02.05.2019**