

Amritlal Shalikaran Gupta

v.

Naresh M. Kantharia and Another

(Supreme Court Of India)

HON'BLE JUSTICE V. N. KHARE HON'BLE JUSTICE N. SANTOSH
HEGDE

Civil Appeal No. 538 of 2001 (Arising Out of Slp (C) No. 9339 of 2000) | 12-01-2001

Leave granted.

The plaintiff-respondent filed a suit against the Municipal Corporation of Greater Bombay in the City Civil Court, Bombay, without giving any notice as required under Section 527 of the Bombay Municipal Corporation Act (hereinafter referred to as "the Act"). The plaintiff-respondent also moved an application for temporary injunction and on that application, the Court granted injunction, which is still intact. After the issues were struck in the suit, the plaintiff-respondent submitted an application to the Court praying that since no notice under Section 527 of the Act was given prior to filing of the suit, he may be permitted to withdraw the suit with liberty to file a fresh suit after giving notice to the Municipal Corporation. The said application was rejected by the City Civil Court. The plaintiff-respondent thereafter filed a revision petition before the Bombay High Court. The High Court was of the view that in case the plaintiff-respondent pays cost amounting to a sum of Rs 50, 000 to the Municipal Corporation for purchasing medicines for Nair Hospital, the permission to withdraw the suit with liberty to file a fresh suit after giving notice to the Corporation be given. In view of that matter, the High Court allowed the revision filed by the plaintiff-respondent. It is against the said judgment, one of the defendants has preferred this appeal.

We have heard counsel for the parties. It is not disputed that the plaintiff-respondent did not serve any notice to the Corporation as required under Section 527 of the Act. The plaint also discloses that no notice as required under Section 527 was given to the Corporation. In the revision petition, the High Court was required to consider whether in view of the facts and circumstances of the case

and under law, it is permissible to permit the plaintiff to withdraw his suit with liberty to file fresh suit. Instead of addressing to the legal question involved in the revision petition, the High Court allowed the revision petition merely on offer of the plaintiff to pay Rs. 50, 000 towards costs. In fact, the High Court fell in error in permitting the plaintiff-respondent to withdraw the suit with liberty to file a fresh suit after giving notice to the Corporation under Section 527 of the Act. Merely because the plaintiff-respondent was ready to pay a sum of Rs. 50, 000 to Nair Hospital for purchasing medicines was not a ground to permit the plaintiff-respondent to withdraw the suit with liberty to file a fresh suit. The plaintiff has already enjoyed injunction order for the period of 19 years. Under the cover of injunction granted by the Court the plaintiff-respondent has benefited from alleged unauthorised construction which has blocked the access to the premises of his neighbours. Since the trial court is required to decide the suit and one of the questions involved therein is maintainability of the suit in the absence of notice under Section 527 of the Act, we refrain ourselves from expressing any opinion on the said question.

Under the circumstances, the judgment under appeal deserves to be set aside. We, therefore, set aside the impugned judgment. The appeal is allowed with costs. The Municipal Corporation is directed to refund a sum of Rs. 50, 000 paid to it by the plaintiff-respondent within four weeks from today.