JYOTI RAJESH MANE
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 707 OF 2026
WITH
INTERIM APPLICATION NO. 5240 OF 2026

Aruna Chunilal Satra and Others. ...Petitioner
Versus
Mumbai Municipal Corporation and others
thr. Commissioner ...Respondents

Mr. A.R.Gole a/w. Ms. Vishwali Botle, for Petitioner.

Ms. Smita V. Tondwalkar, for Respondent Nos.1 and 2.

Mr. Bhavin Gada a/w. Mr. Dhavanl Visawadia a/w. Ms. Dharmi Savla, i/b. Harakhchand & Co. for Respondent No.3.

CORAM: AARTI SATHE, J.

DATE: 01 September 2026

P.C.

1. This Appeal from Order has been filed under Order XLIII Rule 1(r) read with Section 104 of the Code of Civil Procedure, 1908 (CPC) taking exception to the order dated 13th October 2025 passed by the learned City Civil Court, Dindoshi Bench (hereinafter referred to as the "Trial Court") in Notice of Motion No. 3325 of 2025 in S.C. Suit No. 8630 of 2025 (hereinafter referred to as the "impugned order"), *inter-alia* rejecting the aforesaid Notice of Motion filed by the Appellants and rejecting the interim reliefs as sought by the Appellants in the said Notice of Motion.

2. Briefly, the facts are as follows:-

i. The Appellants and Respondent No. 3 are co-owners of land bearing Survey

No. 277, Hissa No. 2 (Part) and bearing CTS No. B/962, admeasuring 565.20 sq. meters in the Revenue Village at Bandra Taluka, situated at the junction of Cemetery Road, St. John Baptist Road, Mount Mary Steps, Bandra West, Mumbai-400050 (hereinafter referred to as the "suit property"). The Appellants are in occupation of the 1st and 2nd floor of the budling on the suit property and 3 commercial galas on the ground floor.

ii. On 24th September 1962, an agreement for sale was executed by and between the erstwhile owners and Kuverbai Punshi Bharmal and Keshavji Sojpal, who were the Original Plaintiffs in Suit No. 5757 of 1998 (renumbered as Suit No. 4227 of 2024), as purchasers in respect of the suit property. On 1st December 1962, a deed of conveyance was registered in respect of the suit property, and the same was registered with the Sub-Registrar of Assurances under Serial No. 2820 of 1962.

iii. It is the Appellants' contention that sometime in the year 1984-85, it was agreed between the Appellants and Respondent No. 3 that the suit property should be redeveloped, and the suit structure (Brick masonry wall and GI roof admeasuring 8 metres*7.6 metres, with 2.4 metres height, on north-east corner of the suit property) would not be demolished. It is further the Appellant's contention that since the Appellants had more share of the suit property, the expenses of redevelopment would not be shared in equal proportion, and the Appellants would be entitled to occupation of the suit structure. On 23rd October 1992, Intimation of Disapproval (IOD) was obtained in respect of the suit property, and building plans were approved on 23rd October 1992.

iv. In the year 1998, the predecessor of Respondent No. 3 filed Suit No. 5757 of 1998 before this Court, claiming that the Appellants were in excess of their entitlement to the suit property. The suit has been re-numbered as Suit No. 4227 of 2024 and is pending adjudication before this court. Respondent No. 3's predecessor had thereafter taken out Notice of Motion No. 2691 of 1998 in Suit No. 5757 of 1998 (renumbered as Suit No. 4227 of 2024)

v. On 5th October 1998, the advocate for Respondent No. 3's predecessor addressed a letter to the Appellants, contending that Respondent No. 3, along with his family members and the Appellants were in joint occupation of the suit structure.

vi. Thereafter, on 1st August 2001, Notice of Motion No. 2691 of 1998 in Suit No. 5757 of 1998 (renumbered to Suit No. 4227 of 2024) was disposed of by a consent order, wherein it was agreed that in the building to be constructed on the suit property, Shop No. 6 on the ground floor would be owned and occupied by the Appellants as agents of the Court Receiver of this Court, and that the 3rd and 4th floors would be owned and occupied by Respondent No. 3 as agent of the Court Receiver of this Court. It was also agreed that the shops on the ground floor were to be owned by the division agreed that was agreed in the consent order/ minutes of the order. The Appellants and Respondent No. 3 had further agreed that they would demolish all temporary structures in their possession within a period of 8 weeks from the date of the said order. It is the Appellants' contention that however, the suit structure was not agreed to be removed/demolished. It was further agreed that the Appellants and Respondent No. 3 would be at a liberty to apply for and

obtain part occupation certificate for the 2nd floor from Respondent No. 1-Corporation.

vii. Thereafter, sometime in the year 2003, Respondent No. 3 filed Writ petition No. 1736 of 2003 and contended therein that the suit structure had been constructed after 1998 by the Appellants.

viii. On 20th November 2007, a City Survey Plan in respect of the suit property H/Ward, Ward No. 1035(4), Street No. 17C was conducted. On 11th December 2008 Respondent No. 1-Corporation addressed a letter to Respondent No. 3's architect in reply to the letter dated 6th September 2008 and informed them that the issue of commencement certificate for the entire work/building which was proposed to be built on the suit property would be considered only after compliance of the following terms:-

a. Unauthorised structure facing John Baptista Road was to be removed.

b. Plastic sheet (Tadpatri) cover between back of the building and southern boundary of the suit property was to be removed.

c. Brick wall touching outside of Shop No. 7 and road level was to be removed.

ix. On 22nd April 2009, Respondent No. 3 preferred Notice of Motion No. 1580 of 2009 in Suit No. 5757 of 1998 (re-numbered to Suit No. 4227 of 2024) wherein it was submitted that the suit structure was unauthorised and liable to be demolished.

x. On 9th July 2009, an order of even date was passed in the aforesaid Notice of Motion No. 1580 of 2009, whereby this Court passed the following order:-

"The Notice of Motion has been filed essentially in order to ensure due implementation of an order dated 1 August 2001 that was passed by consent of parties. By the order of the Court, the Court Receiver was appointed as Receiver of the unconstructed third and fourth floors of the property with a power to appoint the Plaintiffs as agents and to construct the third and fourth floors at the cost of the Plaintiffs. Permission was granted to the Plaintiffs to occupy the same as agents of the Receiver without security and royalty. The Plaintiffs were to carry out construction under the supervision of their Architect. The Consent Terms also provided that the Plaintiffs and the Defendants shall demolish the temporary structures in their possession and remove their articles lying therein. It is not necessary to burden the order with a detailed reference to the Consent Terms save and except to observe that the Consent Terms bind all the parties and continue to hold the field. Difficulties have arisen in the implementation of the Consent Terms. On 3rd December 2003, a further order was passed by this Court by consent of parties; again with a view to ensure that the work of construction is completed without impediment. That object has still not been realised. It would be necessary to clarify that both the orders dated 1st August 2001 and 3rd December 2003 shall be regarded and treated as being in force in effect and save and except for the modification which is issued hereinafter with the consent of the parties, parties shall continue to abide by the previous directions.

After considerable amount of debate between the Learned Counsel, it has been agreed that the following order may be passed by the Court by consent, with a view to facilitate the fulfilment of the Consent Terms dated 1a August 2001:

(i) Shri N.N. Shrikhande is appointed for the purpose of over all supervision of and control over the work that is to be carried out of the construction on the third and fourth floors, in accordance with the Consent Terms dated 1st August 2001;

(ii) The costs, charges and expenses payable to Shri N.N. Shrikhande shall be borne by the Plaintiffs;

(iii). Shri N. N. Shrikhande is requested to ensure that the work of construction is carried out in accordance with the sanctioned plan and to ensure compliance therewith;

(iv) On behalf of the Defendants, it has been stated that (a) The brick wall touching: Shop No.7 shall be removed together with the door in any event within a period of eight weeks from today; (b) A duplicate key to the grill on the staircase shall be handed over to the Plaintiffs within one week from today; (c) The articles on the terrace shall be removed immediately upon the receipt of the commencement certificate; and (d). The monsoon sheds which have been placed on the site with the permission received from the Municipal Corporation, shall be removed by 1st November 2009;

(v) Shri.N.N. Shrikhande would be at liberty to issue suitable directions to the parties to ensure that the construction work is carried out strictly in accordance with the sanctioned plan. All necessary directions may be issued to the parties in order to facilitate. the work of construction, including in regard to ingress and egress to the site and keeping the compulsory open space free of obstruction. The parties would be at liberty to place their problems before the Architect for expeditious solution;

(v) The Plaintiffs have assured the Court that the construction shall be completed within a period of eighteen months of the receipt of the commencement certificate or within such lesser period as may be allowed by the Municipal Corporation;

(vi) The Court Receiver, it is clarified, shall ensure all necessary assistance to Shri Shrikhande in order to enable Shri Shrikhande to complete the task and to

abide by these terms. The Motion is disposed of by consent in these terms."

By way of the aforesaid order, Mr. N. N. Shrikhande was appointed as the Court Commissioner for the purpose of overall supervision and control over the work that was to be carried out for construction on the 3rd and 4th floors on the building proposed to be built on the suit property in accordance with the order and the sanctioned plan.

xi. On 5th April 2010 a letter from Executive Engineer, Building Proposal (W.S.) H/W Ward was sent to the Court Receiver of this Court in Suit No. 5757 of 1998, informing that further commencement certificate for the entire work would be considered only after the following conditions were fulfilled:-

a. **Ground floor structure made up of brick wall masonry and patrashed as a roof constructed at south east corner of the plot B/962, i.e., at the Junction of Kadeshwari Road and St. John Baptista Road was totally removed.**

b. **Fresh demarcation of road line of all the roads abutting the plot were carried out to ascertain the exact plot boundaries and also the encroachment, if any, within the suit property.**

xii. It is Respondent No. 3's contention that on 10th February 2011 there was a certified copy of a City Survey Plan which showed the suit structure as being newly constructed. Further, on 31st August 2011, a letter was submitted by the Court Commissioner Mr. Srikhande to the Court Receiver of this Court, submitting as follows:-

a. **The Court Commissioner submitted that it appeared that unless any**

statutory provisions were involved the demolition of structure (Ground floor structure made up of brick wall masonry and patrashed as a roof constructed at south-east corner of the suit property) was the only balance item of work for getting commencement certificate.

b. The Court Commissioner further observed that even three years ago this particular item was the only item withholding municipal permission.

xiii. Further, in another letter dated 12th September 2011, the Court Commissioner Mr Srikhande wrote to the Court Receiver of this Court that the demolition of unauthorised shed, i.e., the suit structure was the only item remaining which was withholding Municipal permission. Thereafter, on 29th October 2012, the Court Receiver of this Court addressed a letter of even date to Assistant Commissioner of Police, Bandra, asking them to take necessary steps to demolish the unauthorised suit structure as per law under intimation to his office.

xiv. On 28th August 2017, the Designated Officer of Respondent No. 1-Corporation issued a notice under Section 351 of the Mumbai Municipal Corporation Act, 1888 (hereinafter referred to as the "MMC Act") in respect of the suit structure, calling upon the Appellants to show cause as to why the suit structure should not be demolished. It is Respondent No. 3's contention that the said show-cause notice was received only by the Appellants and not by Respondent No. 3.

xv. On 1st September 2017 and 19th September 2017, the Appellants through their advocates addressed a response to Respondent No.1-Corporation and Respondent No. 2, submitting as to why the suit structure was not an unauthorised

structure and was in fact a tolerated structure, i.e., it existed prior to 1961-62. On 23rd July 2018 the Appellants were informed by the Assistant Assessor and Collector at H/W Ward by a letter of even date that the first date of the assessment of property Ward No. H-1035 (4AB), SAC HW-0401620060000, i.e., of the suit structure was prior to 1961-62. It is pertinent to note that it is the Appellants' contention that the assessment records conclusively prove that the suit structure was in existence from the year 1961-62.

xvi. Thereafter, on 24th July 2018 the Appellants filed an additional reply of even date and forwarded a letter dated 23rd July 2018 received from the Assistant Assessor and Collector H/W Ward to contend that the same would conclusively prove that the suit structure was in existence from the period prior to 1961-62.

xvii. On 3rd August 2018 a speaking order was passed by the designated officer of Respondent No. 1-Corporation holding that the suit structure was a tolerated structure, in view of the assessment remark dated 23rd July 2018, as the structure was in existence prior to 1961-62. It is Respondent No. 3's contention that the said speaking order was passed without hearing Respondent No. 3.

xviii. On 10th March 2022 Respondent No. 3 preferred Writ Petition No. 1736 of 2023 before this Court challenging the speaking order dated 3rd August 2018 passed by the Designated Officer of Respondent No. 1-Corporation in respect of the suit structure on the ground that the same was passed without hearing Respondent No. 3. The primary ground raised in the Writ Petition was that an opportunity of personal hearing was not granted to Respondent No. 3 before passing the speaking order dated 3rd August 2018.

xix. On 23rd June 2022 Respondent No. 3 preferred Interim Application No. 118 of 2022 in Suit No. 5757 of 1998 (re-numbered to Suit No. 4227 of 2024) seeking an identical prayer for demolition of the suit structure. It is the Appellants' contention that Respondent No. 3 had alleged that he was unable to obtain commencement certificate for construction of 3rd and 4th floors on the building proposed to be built on the suit property, as the suit structure was not yet demolished.

xx. On 21st March 2023, an order of even date was passed by this Court directing Respondent No. 1-Corporation to file an additional affidavit indicating whether, subject to all the other compliances, commencement certificate could be granted to Respondent No. 3 for construction of 3rd and 4th floors of the building proposed to be built on the suit property. On 10th April 2023 an additional affidavit was filed by Shri. Asif Shaikh, Assistant Engineer (BP), H/W Ward which *inter-alia* stated that in consideration of the earlier permissions and subject to compliance of the conditions stipulated in the IOD, Respondent No. 3 could be granted permission for construction of 3rd and 4th floors of the building proposed to be built on the suit property, despite the presence of the **suit structure**. The relevant paras of the aforesaid affidavit are reproduced below:-

> 1. I say that by Order dated 21.03.2023 passed by Shri. B.P. Colabawalla J., Hon'ble Court has directed "to file a further short affidavit indicating whether subject to all other compliances, permission can be granted to the Plaintiffs for construction of 3rd and 4th floor of the suit premises despite there being a structure identified as permanent shed with brick masonry walls && G.L. sheet roof admeasuring 8 meters x 9,60 meters x 2.40 meters."
> 2. I say that in compliance of aforesaid Order dated 21.03.2023 I am filing further Affidavit in Reply. I further say that to avoid the repetition, the contents of earlier Affidavit in Reply dated 05.04.2023 has to be considered part and parcel of present Affidavit in Reply.
> 3. I say that considering the earlier permissions granted and Subject to requisite compliance as per IOD conditions, permissions can be granted to the Plaintiffs

> for construction of 3rd and 4th floor of suit premises despite there being a structure identified as permanent shed with brick manosnry wall. && GI. Sheet Roof taking Cognizance of the said shed in FSI, as per the Provisions of DCPR 2034.
> 4. In view of the above, the application is liable to be dismissed against Corporation.

xxi. On 9th May 2025, an order was passed by the Division Bench of this Court in Writ Petition No. 1736 of 2023 preferred by Respondent No. 3, remanding the matter back to Respondent No. 1-Corporation for fresh hearing, thereby setting aside the speaking order dated 3rd August 2018. On 15th May 2025, in the said remand proceedings, written submissions were filed by Respondent No. 3 before the Designated Officer of Respondent No. 1-Corporation, and further, written submissions were filed by the Appellants on 21st May 2025 before the Designated Officer of Respondent No. 1-Corporation. Further, additional written submissions dated 26th May 2025 were filed by Respondent No. 3, and on 27th May 2025, additional written submissions were filed by the Appellants before the Designated Officer of Respondent No. 1-Corporation. On 25th July 2025, further additional written submissions were filed by the Appellants before the Designated Officer of Respondent No. 1-Corporation. It is Respondent No. 3's contention that the written submissions dated 27th May 2025 and 25th July 2025 filed by the Appellants were not served upon Respondent No. 3.

xxii. On 14th August 2025, a speaking order was passed by the Designated Officer of Respondent No. 1-Corporation pursuant to the order dated 9th May 2025 passed by the Division Bench of this Court. The speaking order held as follows:-

> After hearing of Architect, Petitioner and the Respondent, this department concludes as follows:

1. As per the city survey plan submitted by the complainant/petitioner dated 10/12/2010, it is indicated that the Notice structure is a new construction. Accordingly, this office sent a letter to the City Survey Department along with the said plan submitted by the complainant/petitioner vide reference no. (viii) and (ix), requesting clear and specific remarks regarding the status of the Notice structure. In response, this office received a letter from the City Survey Department bearing Ref. No. न.भू.बांद्रा 'वी' वॉर्ड/न.भू.क्र.वी/१९६२/मोजणी/२०२५/जायक क्र. २३५१ dated 31/07/2025, stating that, "The City Survey Department is responsible solely for land measurement and survey-related matters. The department does not maintain any official record regarding the period during which the said structure was constructed. However the structure is show existing as on 2010 as new structure.

2. In accordance with the Speaking Order dated 03/08/2018 issued by this office, and Based on the assessment remarks provided by the Assessment Department dated 23/07/2018, it was stated that the notice structure was constructed prior to 1961-1962. Accordingly, the assessment remarks were taken into consideration, and the notice structure was considered as tolerated structure in speaking order dtd.03/08/2018. However the then Asstt. Engineer has not taken cognizance on the Ex. Engineer (B.P) approvals, remarks of 1992, 1998 &2010. Where in th notice structure is not shown/reflected in the approved plans, EE BP record of 1992/1998, Further in 2008.2010 due to existence of the notice structure the further CC for entire work above 2nd floor can not be granted.

3. As per the order dated 21/03/2023 passed by the Hon'ble High Court in Interim Application No. 118 of 2022 in Suit No. 5757 of 1998, the Court has directed the Municipal Corporation of Greater Mumbai (AM.C.G.M.) to file an additional affidavit indicating whether, subject to all other compliances, a Commencement Certificate can be granted to the complainant for the construction of the third and fourth floors of the suit building, notwithstanding the existence of the subject structure on the property. This affidavit has been necessitated us the Hon'ble Court is of the view that once this question is clarified, the entire dispute between the plaintiff and the defendant may be resolved amicably. As per above order of the Hon'ble High Court, Shri. Asif M. Shaikh Asst. Engineer (Building Proposal) H/West Ward has filed an additional affidavit dated 10/04/2023 of the respondent on behalf of M.C.G.M. The said affidavit further states that considering the earlier permission granted and subject to requisite compliances as per 1.0.D. conditions, permission can be granted to the Plaintiffs for construction of 3rd and 4th floor of the suit premises despite there being a structure identified as permanent shed with brick masonry wall and G.I. shect roof taking into cognizance of the said shed in F.S.1., as per provisions of the DCRP 2034, But same can be taken as additional FSI area on premium payment. And it does not prove the authenticity of the notice structure.

4. The Notice structure existed prior to 1961-62. However, as per the approval of the Building Proposal Department in the year 1992, the said structure was not in existence on the site at that time, nor is it reflected in the approved plans of 1992 and-1998.

5. Thereafter, as per the remarks of the Building Proposal Department in 2008, the unauthorized structure was found to be existing on the site. Consequently, the Department refused to grant any further Commencement Certificate until the removal of the said Notice structure. This confirms the existence of the structure in the year 2008.

6. As per the City Survey plan of 2010, the existing structure is a new construction, and as per the letter dated 31/07/2015 the said structure is shown

on site, thereby establishing its existence during the period from 2008 to 2010.
7. As per complaint the notice u/s 351 of MMC Act was issued to the sald structure on 28/08/2017 in response of this office notice, noticee as produce the assessment record of 1961-62 and hence, the Designated Officer/ Assistant Engineer has pass speaking order on 03/08/2018 stating that the notice structure is in tolerated category. But as per the report of EEBP the structure was not in existence during 1992 to 1998. Hence it is not showing continuous existence of the nofice structure since 1961-1962. Hence the structure cannot be put in tolerated category.

Order

In view of the above, it is clear that the said structure has not been in continuous existence since 1961-62 i.e. did not exist during the period from 1992 to 1998. Although records indicate its existence between 2008 and 2010, the same cannot be construed as placing the structure in the tolerated category. Furthermore, as per the affidavit dated 10/04/2023 of the Assistant Engineer, Building Proposal Department, filed on behalf of the Municipal Corporation of Greater Mumbai (MCGM), the sald structure can be taken into FSI calculation but it does not prove its authenticity. It needs additional FSI for the same. Now as per notice issued by this office under section 351 of MMC Act the question is that whether the said structure is tolerated or not and hence, in view of above I am of the opinion that the said structure is not of tolerated category and needs to the demolished. Hence, I passed the order that the notice structure does not proves its continues existent since 1961-1962 and hence, not in tolerated category and unauthorized needs to be demolished.
In view of the above, you are hereby called upon to remove the notice structure which is described in the notice within 15 (Fifteen) days from receipt of this order, failing which the same will be demolished by this office entirely at your risk and cost without giving any further intimation which may please be noted. Further. note that under section 475-A of M.M.C. Act, you shall be punished with imprisonment for a term which shall not be less than 01 (One) month but which may extend to 01 (one) year and with a fine which shall not be less than Five thousand rupees but which may extend to Twenty Five thousand rupees and in the case of continuing offence with further daily fine which may extend to Five hundred rupees.

xxiii. On 8th September 2025 LC Suit No. 2076 of 2025 along with Notice of Motion was filed by the Appellants before the Trial Court challenging the speaking order dated 14th August 2025 passed by the Designated Officer of Respondent No. 1-Corporation under Section 351 of the MMC Act.

xxiv. On 10th September 2025 Notice of Motion No. 3225 of 2025 along with an affidavit in support of the aforesaid Notice of Motion was preferred by the Appellants before the Trial Court. On 11th September 2025, ad-interim reliefs as sought by the Appellants were rejected by the Trial Court. Thereafter, on 17th

September 2025, the Appellants preferred Appeal from Order (St.) No. 31048 of 2025 before this Court, challenging the ad-interim order dated 11th September 2025 passed by the Trial Court. This Court by order dated 17th September 2025 disposed of the aforesaid Appeal from Order and directed Trial Court to dispose of the Notice of Motion within a period of 4 weeks from the date of the order. It further stipulated that if the said order was adverse to the Appellants, the same would be stayed for a further period of 2 weeks from the date of passing the said order in order to enable the Appellants to take recourse to a superior court. The order dated 17th September 2025 passed by this court is reproduced below:-

> P.C . :
> 1. Not on Board. Mentioned by way of filing praecipe dated 17.09.2025. Perused the praecipe.
> 2. Heard Mr. Apte, learned Senior Advocate for Applicants / Appellants; Mr. Suryavanshi, learned Advocate for Respondent No.1 and Mr. Gada, learned Advocate for Respondent Nos.2 and 3.
> 3. Interim Application is filed for impugning ad-interim order dated 11.09.2025 passed by the learned Trial Court in Interim Application (Stamp) No.31049 of 2025. The lis pertains to challenge to notice issued under Section 351(A) of the Mumbai Municipal Corporation, Act 1888 to the notice structure / tolerated structure of the Plaintiff before the Trial Court. It is vehemently opposed by private Respondents represented by Mr. Gada.
> 4. However considering that challenge is to the ad-interim order rejecting ad-interim relief, without opining anything on merits or giving any prima facie imprimatur of this Court, it would be in the interest of justice if the learned Trial Court is directed by this Court to determine the Notice of Motion / Interim Application seeking interim relief expeditiously and finally strictly in accordance with law.
> 5. One of the reason which compels this Court to pass this order is in view of the substantive challenge maintained by the Plaintiffs to the subject notice before Trial Court.
> 6. Needless to state that private Respondent who are equally interested in prosecuting the matter shall be heard strictly in accordance with law and only after hearing all parties, learned Trial Court shall pass a reasoned speaking order for interim relief.
> 7. Hearing shall be done by the Trial Court as expeditiously as possible and in any event within a period of four weeks from today. If the said order is adverse to Plaintiffs, same shall be stayed for a further period of two weeks from the date of passing the order in order to enable the Plaintiffs to take recourse to the superior Court.
> 8. All questions of parties before me are expressly kept open including that of the private Respondents as also the Municipal Corporation
> 9. In view of the above, no coercive steps shall be taken against Plaintiffs' notice

structure while adhering to the directions contained hereinabove.
10. Needless to state that since ad-interim relief is passed on Stamp number of the proceedings, Plaintiffs are permitted to remove the office objections before the Trial Court within a period of one week from today positively. I am also informed that since objections were not removed, the reasoned / speaking ad-interim order is not uploaded and not made available to the Court. In that view of the matter, the aforesaid direction is passed.
11. I am also informed that Registrar in the City Civil Court is on leave / absent for a period of one week. If that is the case, the Deputy Registrar or any other Authorised Officer on his behalf shall take cognizance of this order forthwith and ensure that Plaintiffs are able to remove the office objections.
12. Copy of this order shall be placed before the Principal Judge of the Trial Court for compliance.
13. Appeal from Order and praecipe are both disposed. In view of disposal of Appeal from Order, Interim Application is also disposed.

xxv. Affidavits-in-reply and rejoinders were filed sometime in October 2025 in Notice of Motion No. 3225 of 2025, and the said Notice of Motion filed by the Appellants was rejected by the Trial Court by order dated 13th October 2025. It is being aggrieved by the aforesaid order dated 13th October 2025 passed by the Trial Court in Notice of Motion No. 3225 of 2025 that the present Appeal from Order is sought to be preferred.

3. Learned counsel Mr. A.R. Gole, along with Ms. Vishwali Botle appeared on behalf of the Appellants, Ms. Smita Tondwalkar appeared on behalf of Respondent No. 1-Corporation and Respondent No. 2, and Mr. Bhavin Gada, along with Mr. Dhaval Visawadia and Mr. Dharmi Savla, instructed by Harakhchand & Co. appeared on behalf of Respondent No. 3.

4. Learned Counsel on behalf of the Appellants submitted that the impugned order passed by the Trial Court was unsustainable and passed without considering the documents on record, inasmuch as it decided the question of tolerated status of the suit structure on the basis of consent terms dated 1st August 2001 entered into between the parties, and on the basis of building plans of the year 1992-98, which

according to learned counsel on behalf of the Appellants, were completely irrelevant documents ignoring Respondent No. 1-Corporation's own assessment records, which showed that the suit structure was a tolerated structure. It was further submitted that Respondent No. 1-Corporation's own assessment records establish that the suit structure was a tolerated structure, which was evidenced by the letter dated 23rd July 2018 from the Assistant Assessor and Collector H/W Ward, which certified that the first date of assessment of property Ward No. H-1035 (4AB), SAC HW0401620060000 was prior to 1961-62, and further, the assessment remark dated 3rd February 2025 certified afresh that the suit structure assessed in the earlier SAC No. HW0401620060000 was in existence prior to 1961-62. It was further his submission that the property tax and receipts in respect of the suit structure which were issued from 1967 onwards continued to show the suit structure, and the Appellants had continued to pay property tax thereon without there being any dispute raised by Respondent No. 1-Corporation or Respondent No. 3. It was therefore submitted that the Trial Court's finding that the property tax bills show different dates and hence needed to be discarded was an incorrect approach sought to be taken by the Trial Court. It is the Appellants' contention that the assessment records of Respondent No. 1-Corporation themselves go to prove that the suit structure was a tolerated structure, and taking a contrary view by the Trial Court to deny injunction to the Appellants was arbitrary and misplaced.

5. Learned counsel on behalf of the Appellants also submitted that the circular dated 31st January 1967 issued by Respondent No. 1-Corporation clearly provides

the category of tolerated structures and prescribes the manner of identification thereof. The contents of the aforesaid circular are reproduced below:-

MUNICIPAL CORPORATION OF GREATER MUMBAI

NOICE/40088/I OF 31-1-67

Sub:-Unauthorised (a) Semi permanent structures and (b)Huts and Zavli sheds for non-residential purposes such as shops, cabins, garage, etc.

When complaints are received from the public seeking us to take action for removal of unauthorized structure of the type mentioned above in Suburbs and Extended Suburbs, difficulty arises us to what should be considered as acceptable proof for determining when the structure was constructed. Quite often parties produce old receipts or some other evidence which cannot be considered to be quite reliable. It has been verified that the assessment of semi-permanent structures was first taken up from 1-04-1962 and that of huts and Zavli sheds from 17-4-1962. In view of this, if a structure has been existing whether 'semi-permanent or 'huts' and 'Zavli sheds' prior to 1-04-1962 or 17-4-1962, respectively, it will not be difficult to verify in every such case that it was existing before these respective dates as thereafter, it would come under assessment

Under the circumstances, M.C. has decided that for tolerating unauthorized structures of non-residential users, the datum lines should be as follows:

(a) Semi-permanent structures 1.4.1962

(b) Huts and Zavli shed 17.4.1964

If a complaint is received about a non-residential structure of either of the above types and it is not found to be on the assessment record on the above respective dates, it should be deemed to be a structure that came later to the relevant date mentioned above and action for removal taken, irrespective of rent, receipt or any such evidence produced by the party to show that the structure was standing before 1-04-1962 or 17-4-1962.

As the case may be, it should be noted that these orders should not be applied to unauthorized structures, sheds, or hut required to be removed for any development works.

(Emphasis supplied)

6. It was therefore submitted that the binding nature of the circular itself has not been taken into consideration by the Trial Court, and therefore the impugned order ought to be set aside. It was also contended that once the assessment records of Respondent No. 1-Corporation themselves establish that the suit structure was a tolerated structure, then to hold anything to the contrary would amount to discarding the sanctity of the documents issued by Respondent No. 1-Corporation. Learned counsel on behalf of the Appellants also submitted that the order dated

14th August 2025 itself proceeds on an erroneous footing that the letter dated 31st July 2025 issued by the City Survey Department stated that it maintains no record of the period of construction of the suit structure, however, the suit structure is shown as an existing structure as on 2010 in the category 'new structure'. Learned counsel submits that this was a misreading of the letter dated 31st July 2025. On the aforesaid grounds, the counsel submitted that the impugned order was vitiated and not based on a *prima facie* view of all the documents.

7. *Per contra*, learned counsel on behalf of Respondent No. 3 has submitted that the plans which were put up for sanction in respect of the suit property in the year 1985, 1986, and 1992 did not show/ specify the suit structure. He further submitted that the contention of the Appellants that the said plans did not consist of the suit structure only because it was not a RCC structure is a baseless and dishonest attempt on the part of the Appellants to mislead this Court, and the same is contrary to Development Control and Promotion Regulations (DCPR) 2034. It was further his contention that the suit structure was constructed by the Appellants being a shed with brick masonry wall and GI roof in the year 1998, which was illegal and unauthorized, and that the suit structure fell on the suit property which was jointly owned by the Appellants and Respondent No. 3. It was further submitted that as per the Maharashtra Shops and Establishments Act, 1948 insofar as the registration certificate dated 27th May 1999 of the suit structure was concerned, the same showed as "new". It was further submitted that in Suit No. 5757 of 1998(renumbered to Suit No. 4227 of 2024), wherein Respondent No. 3 had filed Notice of Motion No. 2691 of 1998 and order dated 1st August 2001 was

passed in terms of the minutes of the order and clause 3 of the minutes of the order, it was specifically stated that within 8 weeks of the order, the Appellants and Respondent No. 3 shall demolish all temporary structures in their possession and remove their articles lying therein. The relevant clause 3 of the minutes of the order is reproduced below:-

> Within 8 weeks from today the Plaintiffs and Defendants shall demolish the Temporary Structures in their possession and remove their articles lying herein.

8. It was therefore contended by learned counsel on behalf of Respondent No. 3 that in spite of the aforesaid order dated 1st August 2001 being passed by this Court, wherein parties by consent had agreed to demolish the suit structure, the same has not been done so far by the Appellants. It was further submitted that in the City Survey Plan dated 20th November 2007 in respect of the suit property, the suit structure was not reflected, and this further goes on to establish that the suit structure was never in existence. It was further submitted that pursuant to the order dated 9th July 2009 passed by this Court with a view to facilitate the implementation and fulfillment of the consent order dated 1st August 2001, Mr. N. N. Shrikhande was appointed as the Court Commissioner for the overall supervision and control over the work that was to be carried out in respect of the 3rd and 4th floors pursuant to the consent terms, and pursuant thereto the aforesaid Court Commissioner by his letters dated 31st August 2011 and 12th September 2011 submitted as follows:-

> Letter dated 31st August 2011
> "It is to be mentioned here that as far as this office is concerned, further commencement certificate for the entire work will be considered only after
> 1) Ground floor structure made up of brick wall masonry and patrashed as a roof constructed at the south east corner of the plot B/962 i.e at the Jn. of Kadeshwari Road and St.John Baptista Road is totally removed".

Letter dated 12th September 2011
"the demolition of unauthorized shed is the only item remaining which is withholding municipal permission"

9. Further there were also letters issued by the Executive Engineer, Building Proposal (W.S.) H Ward to the Court Receiver of this Court in Suit no. 5757 of 1998 (re-numbered to Suit No. 4227 of 2024) wherein also it was informed that the suit structure was required to be demolished. It is therefore Respondent No. 3's contention that the aforesaid correspondence and the view taken by the Court Commissioner clearly establish that the suit structure was an illegal structure and was clearly unauthorized. It was further submitted that order dated 3rd August 2018 was passed by the Designated Officer of Respondent No. 1-Corporation without giving an opportunity of hearing to Respondent No. 3, and the said order considering the suit structure as a tolerable structure was passed on the basis of the letter dated 23rd July 2018. This, according to Respondent No. 3 could not be the only basis on which the suit structure could be considered as a tolerable structure. Further, Respondent No. 3 contended that the order dated 3rd August 2018 was a subject matter of challenge before this Court, and the matter was remanded back to the Designated Officer of Respondent No. 1-Corporation on 9th May 2025 for a fresh hearing. In the remand proceedings, various written submissions were filed, and by order dated 14th August 2025 the Designated Officer of Respondent No. 1-Corporation has come to a clear conclusion that the suit structure has not been in existence since the year 1961-62. The relevant findings in the aforesaid order are reproduced in paragraph 2(xxii) above.

10. Learned counsel has also sought to place reliance on the decision of the

Supreme Court in the case of **Ramakant Ambalal Chokshi Vs Harish Ambalal Chokshi & Others**[1] to contend that the Appellate Court cannot interfere with the exercise of the discretion of the Trial Court and substitute its own discretion, except where the discretion has been shown to have been exercised arbitrarily or capriciously or perversely, or where the Court has ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. He has therefore submitted that the Trial Court on the basis of the evidence placed on record and submissions advanced on behalf of the parties has arrived at a reasoned conclusion and on a proper application of mind has come to the conclusion of rejecting Notice of Motion No. 3225 of 2025 challenging the speaking order dated **14th August 2025** passed by the Designated Officer of Respondent No. 1-Corporation.

ANALYSIS AND FINDINGS

11. I have considered the rival submissions and perused the impugned order along with the relevant documents. At the very outset, it is an undisputed fact that the suit property was jointly owned by the Appellants and Respondent No. 3, and the only bone of contention in the present case is in respect of the suit structure, which Respondent No. 3 contends is unauthorized/illegal. A perusal of the documents indicates that though the suit structure was earlier considered a tolerated structure, however, the Trial Court, on the basis of perusal of the letter dated 23rd July 2018 issued by the the Assistant Assessor and Collector at H/W Ward has on a *prima facie* basis rightly come to the conclusion that the first assessment was of the year 1961-62, which was applicable in respect of the original

1 Civil Appeal No. 13001 of 2024 @ Special Leave Petition (Civil) No. 252 of 2023

structure and not to subsequent changes which were made on the suit property, i.e., the suit structure, which is unauthorized/illegal. This finding, to my mind, cannot be disturbed, inasmuch as the Trial Court has also considered that though in the order dated 3rd August 2018 heavy reliance was placed on the letter dated 23rd July 2018, the said order was a subject-matter of challenge before this Court, and this Court by order dated 9th May 2025 remanded the matter for a fresh hearing, considering the rival claims regarding the legality of the suit structure. Further, the Trial Court has also based its conclusion on the order dated 1st August 2001 passed by this Court in Notice of Motion No. 2691 of 1998 in Suit No. 5757 of 1998 (renumbered to Suit No. 4227 of 2024), wherein by consent it was the agreed that the Appellants and Respondent No. 3 would demolish from the suit property all the temporary structures in their possession and remove their articles lying therein. Further, to facilitate these minutes of order, this Court by further order dated 9th July 2009 appointed Mr. N.N. Shrikhande as the Court Commissioner for the purpose of overall supervision and control over the work that was to be carried out in respect of the 3rd and 4th floors on the suit property in accordance with the consent order dated 1st August 2001. In fact, the letters which have been issued by the Court Commissioner and also by Court Receiver of this Court to Assistant Commissioner of Bandra Police and by the Executive Engineer, Building Proposal of Respondent No. 1-Corporation to the Court Receiver of this Court have specifically mentioned that the suit structure ought to be removed, and it is only thereafter the construction would commence for the 3rd and 4th floors on the suit property. The Trial Court has also considered that the documents of assessment

show that some receipts relate to a structure which is prior to 1961-62, and some receipts are after 1970-71, and they show different SAC numbers. The Trial Court has therefore taken into consideration all the aforesaid documents to come to the conclusion that the suit structure cannot be a tolerated structure, and hence rightly dismissed Notice of Motion No. 2691 of 1998 in Suit No. 5757 of 1998 (renumbered to Suit No. 4227 of 2024) filed by the Appellants, refusing to grant them injunction.

12. I am of the view that the consent terms which form part of the order dated 1st August 2001 had put an onus on both the parties to remove the temporary structures in their possession, and this has not been complied with so far, which the Trial Court has taken into consideration before passing the impugned order. The Appellants' contention therefore, that only because the letter dated 23rd July 2018 from Assistant Assessor and Collector at H/W Ward certified that the first date of assessment was prior to 1961-62 and the assessment remark dated 3rd February 2025 showed that the suit structure was in existence prior to 1961-62 the suit structure to be treated tolerated is erroneous, inasmuch as, the same could not be the only basis on which the suit structure could be held as a tolerated structure, as there were discrepancies in the said documents, particularly the assessment remark dated 3rd February 2025, which clearly records that the structure under reference **seems** to have been assessed under SAC HW-0401620060000. In my view, all these contentions regarding the legality of the suit structure on the basis of documents can be examined and gone into detail at the time of trial of the proceedings. However, the impugned order passed by the Trial Court has, on

examination of all these documents, come to a *prima facie* view, which to my mind is not a view which can be termed as arbitrary or perverse, and would be a plausible view which the Trial Court has come to after consideration of all documentary and factual material on record and proper application of mind. I am further of the view that applying the principles of **Wander Ltd. v. Antox India (P) Ltd.**[2], while considering an application under Order XXXIX Rules 1 and 2 of the CPC,the appellate court would not ordinarily interfere with the exercise of discretion by the court of first instance or substitute its own discretion, except where such discretion has been exercised or has been shown to have been exercised arbitrarily, or capriciously, or perversely, or where the Court has ignored the settled principles of law regulating grant or refusal of interlocutory injunctions, and the facts of the present case do not warrant any interference with the impugned order of the Trial Court as the impugned order is a well-reasoned and well-considered order.

13. I am further of the view that once the consent terms made it obligatory on the part of the Appellants and Respondent No. 3 to demolish the temporary structures on their possession, which admittedly the Appellants have not done so far, would by itself be a ground on which the Trial Court has rightly refused the injunction as sought by the Appellants. It is also an admitted fact that in the plans submitted by the Appellants in years 1985, 1986, and 1992 the suit structure has not been shown, which itself shows that the very existence of the suit structure was always in doubt. The Trial Court, therefore, on a *prima facie* view, has rightly come to the conclusion that the suit structure was erected after the datum line, and hence

2 1990 Supp SCC 727

the fresh speaking order dated 14th August 2025 which was passed post the direction of this Court by order dated 9th May 2025, has held that the suit structure was not in existence prior to the datum line. The Trial Court, therefore, on an appreciation of the entire factual conspectus and the evidence on record has passed a reasoned order, which does not warrant any interreference, and most certainly cannot be termed as an arbitrary or perverse order. I am therefore in agreement with submission made on behalf of Respondent No. 3 that the present Appeal from Order deserves to be dismissed, and am further of the view that the reliance of Respondent No. 3 on the case of **Ramakant Ambalal Chokshi Vs Harish Ambalal Chokshi & Others** (supra) is apposite to the facts of the present case and upholds the view as laid down in **Wander Ltd. v. Antox India (P) Ltd**. (supra). The relevant paragraphs of the decision rendered in **Ramakant Ambalal Chokshi Vs Harish Ambalal Chokshi & Others** (supra) are reproduced below –

> 16.4. Injunction was granted by the trial court by way of a well-reasoned order after taking into consideration all the detailed facts and contentions of both the parties. The appellate court should remain slow in substituting its own discretion with the one exercised by the court of first instance unless the exercise of discretion by the first court was shown to be malicious, capricious, perverse or having been exercised in ignorance of the settled principles of law regulating the grant or refusal of interlocutory injunctions.
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> …
>
> 21. With regard to (a), this Court held thus: (Wander case-, SCC p. 733, para 14)
>
> > "14.... In such appeals, the appellate court will not interfere with the exercise of discretion of the court of the first instance and substitute its own discretion, except where the discretion has been shown to have been exercised arbitrarily or capriciously or perversely, or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. ...The appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below.... If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion."
>
> 22. This Court, while arriving at the above findings, relied on its earlier judgment in Printers (Mysore) (P) Ltd. v. Pothan Joseph, wherein it was held

thus: (Printers case, SCC OnLine SC para 9)

> "9.... as has been observed by Viscount Simon LC in Charles Osenton & Co. v. Johnston-, the law as to reversal by a court of appeal of an order made by a Judge below in the exercise of his/her discretion is well established, and any difficulty that arises is due only to the application of well-settled principles in an individual case."

…

24. In Evans case, Lord Wright made it clear that while adjudicating upon the discretion exercised by the trial court, the appellate court is obliged to consider the case put forward by the appellant in favour of its argument that the trial court exercised its discretion arbitrarily or incorrectly in the circumstances.

25. What flows from a plain reading of the decisions in Evans and Charles Osenton° is that an appellate court, even while deciding an appeal against a discretionary order granting an interim injunction, has to:

(a) Examine whether the discretion has been properly exercised i.e. examine whether the discretion exercised is not arbitrary, capricious or contrary to the principles of law; and

(b) In addition to the above, an appellate court may in a given case have to adjudicate on facts even in such discretionary orders.

26. The principles of law explained by this Court in Wander have been reiterated in a number of subsequent decisions of this Court. However, over a period of time the test laid down by this Court as regards the scope of interference has been made more stringent. The emphasis is now more on perversity rather than a mere error of fact or law in the order granting injunction pending the final adjudication of the suit.

27. In Neon Laboratories Ltd. v. Medical Technologies Ltd., this Court held that the appellate court should not flimsily, whimsically or lightly interfere in the exercise of discretion by a subordinate court unless such exercise is palpably perverse. Perversity can pertain to the understanding of law or the appreciation of pleadings or evidence. In other words, the Court took the view that to interfere against an order granting or declining to grant a temporary injunction, perversity has to be demonstrated in the finding of the trial court.

28. In Mohd. Mehtab Khan v. Khushnuma Ibrahim Khan, this Court emphasised on the principles laid down in Wander- and observed that while the view taken by the appellate court may be an equally possible view, the mere possibility of taking such a view must not form the basis for setting aside the decision arrived at by the trial court in exercise of its discretion under Order 39 CPC. The basis for substituting the view of the trial court should be mala fides, capriciousness, arbitrariness or perversity in the order of the trial court. The relevant observations are extracted below: (SCC p. 230, para 20)

> "20. In a situation where the learned trial court on a consideration of the respective cases of the parties and the documents laid before it was of the view that the entitlement of the plaintiffs to an order of interim mandatory injunction was in serious doubt, the appellate court could not have interfered with the exercise of discretion by the learned trial Judge unless such exercise was found to be palpably incorrect or untenable. The reasons that weighed with the learned trial Judge, as already noticed, according to us, do not indicate that the view taken is not a possible view. The appellate court, therefore, should not have substituted its views in the matter merely on the ground that in its opinion the facts of the case call for a different conclusion. Such an exercise is not the correct parameter for exercise of jurisdiction while hearing an appeal against a discretionary order. While we must not be understood to have said that the appellate court was wrong in its conclusions what is sought to be

> emphasised is that as long as the view of the trial court was a possible view the appellate court should not have interfered with the same following the virtually settled principles of law in this regard as laid down by this Court in Wander Ltd. v. Antox India (P) Ltd."
>
> 29. This Court in Shyam Sel & Power Ltd. v. Shyam Steel Industries Ltd. observed that the hierarchy of the trial court and the appellate court exists so that the trial court exercises its discretion upon the settled principles of law. An appellate court, after the findings of the trial court are recorded, has an advantage of appreciating the view taken by the trial Judge and examining the correctness or otherwise thereof within the limited area available. It further observed that if the appellate court itself decides the matters required to be decided by the trial court, there would be no necessity to have the hierarchy of courts.
>
> 30. This Court in Monsanto Technology LLC v. Nuziveedu Seeds Ltd., observed that the appellate court should not usurp the jurisdiction of the Single Judge to decide as to whether the tests of prima facie case, balance of convenience and irreparable injury are made out in the case or not.
>
> 31. The appellate court in an appeal from an interlocutory order granting or declining to grant interim injunction is only required to adjudicate the validity of such order applying the well-settled principles governing the scope of jurisdiction of the appellate court under Order 43 CPC which have been reiterated in various other decisions of this Court. The appellate court should not assume unlimited jurisdiction and should guide its powers within the contours laid down in Wander case.

14. I am further of the view that the reliance on the in **Great Eastern Energy Corporation Ltd. v. Jain Irrigation Systems Ltd.**[3] decision by learned counsel on behalf of Appellants to contend that while granting interim injunction, the term "*prima facie* case" also includes an exercise to be undertaken by the Trial Court as to whether an arguable case exists, and also the material on the face of it shows that triable issues are involved over and above the settled principles of irreparable injury and balance of convenience, which has not been done in the present case is a submission which deserves to be dismissed. This in view of the fact, that in the present case, all three ingredients exist, as certainly the material on record show triable issues as held by me in paragraph No. 12 above, and that by granting injunction to the Appellants, Respondent No. 3 would face irreparable loss, considering that they are unable to construct the 3rd and 4th floors on the suit

3 2010 SCC OnLine Bom 248

property on account of non-removal of suit structure by the Appellants in complete contravention of the consent terms between the Appellants and Respondent No. 3. The balance of convenience therefore lies in favour of Respondent No. 3. All these aspects have been considered by the Trial Court and therefore the impugned order does not warrant interference.

15. Considering the aforesaid facts and the settled position of law, I am of the view that the impugned order has been passed after duly appreciating the facts and the applicable law. The view taken by the Trial Court is a plausible view and does not warrant interference by this Court in its appellate jurisdiction.

16. In view thereof, the Appeal from Order fails and is accordingly dismissed. The Trial Court is directed to dispose of suit expeditiously. There shall be no order as to costs.

17. In view of the dismissal of the Appeal from Order, pending Interim Application(s), if any do not survive and are accordingly disposed of.

(AARTI SATHE, J.)