

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****APPEAL FROM ORDER NO. 572 OF 2014****IN****L.C. SUIT NO. 1167 OF 2014****ALONGWITH****CIVIL APPLICATION NO.695 OF 2014****IN****APPEAL FROM ORDER NO. 572 OF 2014****IN****L.C. SUIT NO. 1167 OF 2014****Sukhdeo Vishwakarma****..... Appellant****VERSUS****The Municipal Corporation of Greater
Mumbai****..... Respondents**

Mr.C.K.Tripathi for the Appellant.

Ms.M.R.Bhoir for the Respondents – BMC.

CORAM : R.D. DHANUKA, J.**DATED : 24th NOVEMBER, 2015****P.C.**

This appeal is directed against the order dated 16th May, 2014 passed by the learned single trial Judge refusing to grant ad-interim relief in the notice of motion for injunction in a suit for injunction against the Municipal Corporation from demolishing the structure of the appellant without due process of law.

2. It is not in dispute that the Municipal Corporation did not issue any notice. The learned trial judge however has made certain observations about the existence of the suit structure. Since the Municipal Corporation did not issue any notice alleging any unauthorized construction on the part of the appellant, in my view the order passed by the learned trial judge refusing to grant any ad-interim relief

deserves to be set aside. It is however made clear that the Municipal Corporation would be at liberty to issue appropriate notice if according to the Municipal Corporation the suit structure is unauthorized under the provisions of the Bombay Municipal Corporation Act. It is made clear that the appellant shall not carry out any further construction in the suit premises without obtaining permission of the Municipal Corporation.

3. Appeal is disposed of in the aforesaid terms. Municipal Corporation shall not demolish the suit structure without issuing appropriate notice under section of Bombay Municipal Corporation Act and without due process of law. No order as to costs. In view of disposal of the appeal from order, civil application does not survive and is accordingly disposed of.

[R.D. DHANUKA, J.]