

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****APPEAL FROM ORDER NO. 922 OF 2015****IN****NOTICE OF MOTION NO. OF 2015****IN****L.C.SUIT NO. 720 OF 2015****Dattatray Tukaram Kambli****..... Appellant****VERSUS****Municipal Corporation of Greater Mumbai
& Anr.****..... Respondents**

Mr.L.H.Patil for the Appellant.

Mr.A.V.Diwate for Respondent No.1 – BMC.

Mr.Chales D'Mello for Respondent No.2.

CORAM : R.D. DHANUKA, J.**DATED : 7th DECEMBER, 2015****P.C.**

By this appeal from order, the appellant has impugned the order dated 7th May, 2015 passed by the learned trial judge vacating the ad-interim order dated 18th March, 2015 which was granted in favour of the appellant herein. A perusal of the impugned order indicates that the learned trial judge has vacated the ad-interim order on the ground that the PIL is pending in this court. The respondents to this appeal has not filed affidavit in reply before the learned trial judge. In my prima facie view the learned trial judge could not have vacated the ad-interim protection already granted by order dated 18th March, 2015 merely on the ground that the PIL is pending. None of the respondents have filed affidavit in reply. The learned trial judge has directed that the notice of motion be heard and has adjourned the matter

for filing affidavit in reply. In spite of the said direction issued by the learned trial judge, none of the respondents had filed any affidavit in reply.

2. The respondents (original defendants) are directed to file affidavit in reply within two weeks from today and shall serve a copy thereof upon the plaintiff's advocate simultaneously. Rejoinder if any, shall be filed within two weeks from the date of service of affidavit in reply.

3. Municipal Corporation is directed not to carry out any further demolition on the suit structure till the disposal of the notice of motion.

4. It is made clear that the plaintiff shall not carry out any further construction without obtaining prior sanction from the Municipal Corporation. The learned trial judge shall make an endeavour to dispose of the notice of motion expeditiously and not later than six months from the date of parties completing the pleadings before the learned trial judge.

5. Appeal from order is disposed of in the aforesaid terms. No order as to costs.

[R.D. DHANUKA, J.]