

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

APPEAL FROM ORDER NO.1074 OF 2014

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
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Mr.Vinod Mahadik for the BMC

Mr.Ameya Patil with Ms.Urvi Dave i/b
Mr.Vivek Kantawala and Co. for the
respondent

CORAM : K.K.TATED, J.
DATED : 20/01/2015

PC:

- 1 Heard the learned counsel for the parties.
- 2 This Appeal from Order is preferred by original defendant Corporation challenging the ad interim relief granted by the trial court on 5.3.2014 restraining the appellant from taking any action pursuant to the notice under section 354 A of the MMC Act and order dated 11.10.2007 in respect of the suit structure situated at 70, Mint Road, Fort, Mumbai 400 001.
- 3 The trial court by order dated 5.3.2014 held that earlier the predecessor of respondent original plaintiff filed L.C.Suit No.3628 of 2007

in which the court granted interim relief restraining Corporation from taking any action. That suit was withdrawn by the predecessor of the respondent / plaintiff on 5.2.2014. These facts were not known to the respondent plaintiff when the Officer of the Corporation approached the respondent for taking action as per notice under section 354A of the MMC Act. Hence, the respondent filed the present L.C.Suit No.670 of 2014.

4 Considering these facts, the trial court granted ad interim relief in terms of prayer clause (a) of the draft Notice of Motion till the filing of the affidavit in reply by the Appellant Corporation. That order passed by the trial court on 5.3.2014.

5 The learned counsel for the respondent original plaintiff submits that the Corporation had filed their Affidavit-in-Reply on 2.4.2014 and thereafter the trial court passed another order granting ad interim protection to the plaintiff. That subsequent order is not challenged by the Corporation in the present Appeal from Order. Hence, the Appeal from Order becomes infructuous. In view of subsequent development, Appeal from Order stands rejected.

6 Considering the submissions made by the learned counsel for the Corporation, the trial court is directed to hear the Notice of Motion No.924 of 2014 preferred by respondent / plaintiff as early as possible but in any case within four months from the receipt of order passed by this court.

(K.K.TATED, J.)