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

**APPEAL FROM ORDER(L) NO. 20608 OF 2015
WITH
CIVIL APPLICATION NO. 20610 OF 2015
IN
APPEAL FROM ORDER(L) NO. 20608 OF 2015**

Jaywanth D. Kothari

...Appellant

Vs.

The Municipal Corporation of Greater
Mumbai, BMC

...Respondent

Mr. Sanjiv A. Sawant for the Appellant
Mr. N.V. Walavalkar, Sr. Advocate a/w.
Mr. A.V. Diwate for the Respondent MCGM

**CORAM : MRS. ROSHAN DALVI, J.
DATED : 11TH SEPTEMBER, 2015**

P.C. :

Rule. Returnable forthwith.

1. The appellant has challenged the order of the Bombay City Civil Court dated 17th July, 2015 on the ground that the notice of motion has been rejected without framing and deciding the issue of jurisdiction.
2. On that fact the learned Judge has considered the jurisdiction as said in paragraph No.14 of the order itself. He has held in paragraph 21 of the order that he has no

jurisdiction and even on merits no prima facie case is made out.

3. The appellant's contention that the jurisdictional aspect only should have been decided and if the Court comes to the conclusion that it had no jurisdiction, it could not have passed an order on merits is justified.
4. Consequently technically the order is incorrect and hence it is required to be set aside.
5. The ad-interim order dated 13th June 2014 only stated that the plaintiff produced documentary evidence on record and that the defendant had not produced any record to show that construction work of the noticed structure was in progress. On that ground alone and without considering the documentary evidence the ad-interim order was passed, which remained in force until the notice of motion was rejected.
6. The appellant applies for continuation of the ad-interim order. Since the appellant has challenged the order in the notice of motion and has argued on the merits of the case, the merits must be considered by the Appellate Court.

7. The appellant has produced a Patch Holder Card for the structure on CTS No. 185 which is 21/100 ft. making it 2100sq. ft. in area. Patch Holder Card is undated and issued to one Sohanlal Rathod by the Assistant Estate Manager, Maharashtra Housing Board, Bombay. It is not issued by the Collector's office though it is a card of the Government of Maharashtra. The patch Holder Card does not show receipt of any cess paid for the censused structure. The patch holder card is issued upon the application made in 1976.
8. The same structure must remain in existence until the appellant applies for relief. Hence the appellant has been directed to produce photographs of the suit structure.
9. The appellant has produced photographs, of the suit structure which is a patra shed on iron bars with roof of patra taken from close. Such a structure cannot be accepted to have remained in same condition for the last 39 years when the patch holders card has been stated to have been issued though not bearing any date.
10. The structure would have been protected under the patch holder card but for the fact that the patch holder card is not seen to be a genuine document, it having been issued, as aforesaid, by Maharashtra Housing Board whilst it is the document of the Government of Maharashtra and does not

show cess amount paid.

11. Consequently on merits ad-interim injunction for protection of the suit structure is not granted.
12. Since the order on the notice of motion is set aside, the trial Court shall consider the issue of jurisdiction on merits.
13. Four photographs of the suit structure tendered by the appellant are taken on record. The census card and the application of Sohanraj Rathod are returned to the appellant.
14. Appeal as well as civil application are disposed off accordingly.
15. The earlier ad-interim order passed by the learned Judge is continued for 2 weeks.

(ROSHAN DALVI, J.)

CERTIFICATE

Certified to be true and correct copy of the original signed Judgment /order.