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

**APPEAL FROM ORDER NO. 24189 OF 2015
WITH
CIVIL APPLICATION (L) NO. 24191 OF 2015**

Om Sai Motors Pvt. Ltd. ...Appellant
through its Director Mr. Gangadhar Shetty
Vs.
Municipal Corporation of Greater Mumbai ...Respondent

Mr. Amarendra Mishra for the Appellant
Mr. A.V. Diwate for the Respondent BMC

**CORAM : MRS. ROSHAN DALVI, J.
DATED : 1ST OCTOBER, 2015**

P.C. :

Rule. Returnable forthwith.

1. The appellant has challenged the order of the Bombay City Civil Court dated 28th August, 2015 refusing ad-interim relief on the ground that no license has been obtained by the appellant. The appellant challenged the refusal of the grant of license despite his application and submission of documents in the suit. The refusal is on the ground that the documents are not submitted. The statement is wholly incorrect. 9 documents were submitted. Out of them the first was the most material. It is the factory license which is issued by the respondent and renewed until 2007.

2. The factory license is issued under Section 390 of the MMC Act 1988. The license would not be issued if it causes nuisance to the inhabitants in the neighbourhood. The appellant is in industrial zone. He carries on his business and used his factory premises amongst other small scale industries. He has been issued factory license. This would show that his factory would not cause nuisance to inhabitants in the neighbourhood.
3. The factory would be run to trade. there would no use of the factory license, if the owner cannot carry on his trade and is not issued trade license under Section 394. The parameters for the issue are the same; nuisance is a criteria.
4. Consequently the appellant's seminal challenge in the suit stands to reason. No authority can refuse license without giving reason. The only reason is the documents are not produced. The documents as seen to have been produced and hence the order is wholly incorrect.
5. This is what the trial Judge has considered. The appellant has not been granted license and the respondent has been directed to examine the appellant's documents and pass a fresh order. That order is correct. However since it is seen that the respondent's order already passed is wholly

erroneous, the respondent cannot stay under the shadow of its order whilst the appellant cannot carry on its trade. The respondent shall pass the reasoned order on the documents already submitted within 2 weeks from the date this order is served upon the respondent.

6. The civil application as also the appeal are disposed off accordingly.

(ROSHAN DALVI, J.)

CERTIFICATE

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