

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

**FIRST APPEAL NO.1446 OF 2012
WITH
CIVIL APPLICATION NO.3318 OF 2013
IN
FIRST APPEAL NO.1446 OF 2012**

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.M.A.Haindady for the appellant

Mrs.M.R.Bhoir for the BMC

CORAM : K.K.TATED, J.
DATED : 20/02/2015

PC:

- 1 Heard the learned counsel for the parties.
- 2 This First Appeal is preferred by original plaintiff challenging the decree dated 09.08.2012 passed by City Civil Court for Greater Mumbai (Borivali Division), Dindoshi, Goregaon, Mumbai in Long Cause Suit No.74 of 2007 dismissing the appellants suit for declaration that the order dated 28.12.2006 passed by Assistant Commissioner is illegal bad in law as well as for injunction.
- 3 The learned counsel for the appellant original plaintiff submits that the respondent Corporation issued a notice under section 351 of the Mumbai

Municipal Corporation Act, 1888 dated 5.12.2003 directing appellant to remove the unauthorized construction and extension to the existing structure with brick masonry walls, rolling shutters and A.C. Sheet roof. Details as shown in the sketch.

4 The learned counsel for the appellant submits that the Trial Court in impugned judgment as well as respondent Corporation in their affidavit admitted that the appellant structure admeasuring 47.58 sq.mtrs is assessed prior to 1961-62. Hence, there is no question of demolition of the same.

5 The learned counsel for the respondent filed affidavit of Shishir Chandrashekher Khokale dated 12.2.2015 stating in paragraph 3 that they do not want to remove the appellants' structure admeasuring 47.58 sq.mtrs which is assessed prior to 1961-62.

6 In view of affidavit dated 12.2.2015 of Corporation, the learned counsel for the appellant seeks permission to withdraw the present First Appeal as well as Civil Application. Same is allowed.

7 First Appeal as well as Civil Application stands dismissed as withdrawn in view of the affidavit filed by Corporation dated 12.2.2015

8 Needless to state that if the respondent Corporation finds additional construction over and

above 47.58 sq.mtrs. (suit property) they can
demolish the same.

(K.K.TATED, J.)