

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****APPEAL FROM ORDER (ST.) NO. 30833 OF 2015****IN****NOTICE OF MOTION NO.2790 OF 2015****IN****L.C.SUIT NO. 2937 OF 2015****ALONGWITH****CIVIL APPLICATION (ST) NO. 30834 OF 2015****IN****APPEAL FROM ORDER (ST.) NO. 30833 OF 2015****IN****NOTICE OF MOTION NO.2790 OF 2015****IN****L.C.SUIT NO. 2937 OF 2015****Sharad Motiram Mhatre & Anr.****..... Appellants/
(Original Plaintiffs)****VERSUS****Municipal Corporation of Greater Mumbai
& Anr.****..... Respondents/
(Original Defendants)**

Ms.R.C.Nichani, i/b. Mr.Mahadev Pokale for the Appellants.

Ms.M.R.Bhoir for the Respondents – BMC.

CORAM : R.D. DHANUKA, J.**DATED : 17th NOVEMBER, 2015****P.C.**

By this appeal the appellants have impugned the order passed by the learned trial Judge refusing to grant ad-interim relief in the Notice of Motion in which the respondent had applied for stay against the Municipal Corporation from enforcing the notice under section 351 of the Bombay Municipal Corporation Act. It is the

case of the appellants that though large number of documents were produced by the appellants before the concerned officer and the trial Judge, the same were not considered.

2. Perusal of the record passed by the trial Judge indicates that the learned trial Judge has rejected the ad-interim relief merely on the ground that the application made by the appellants was sent to a wrong ward and thus there could not have been a deemed permission in favour of the appellants to carry out any alterations.

3. In my view, since the learned trial Judge has not considered the large number of documents produced by the appellants, it would be appropriate if the appellants are granted ad-interim protection and the notice of motion is itself is heard expeditiously. I, therefore, pass the following orders :-

(a) Municipal Corporation is directed to file affidavit in reply to the notice of motion within three weeks from today and serve a copy thereof upon the plaintiffs' advocate simultaneously.

(b) Learned trial Judge is directed to dispose of the Notice of Motion expeditiously and not later than four months from the date of the parties producing copy of this order.

(c) There shall be ad-interim injunction in terms of prayer clause (a) of the notice of motion during the pendency of the said notice of motion.

(d) The parties are directed to co-operate with each other and with the learned trial Judge in the expeditious disposal of

the notice of motion and shall not apply for any unnecessary adjournments.

4. Appeal from order is disposed of in the aforesaid terms.
5. In view of the disposal of the appeal from order, civil application does not survive and is accordingly disposed of.

[R.D. DHANUKA, J.]