

**FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE JURISDICTION.**

**APPEAL FROM ORDER NO. 36 OF 2015
WITH
CIVIL APPLICATION NO. 47 OF 2015**

Ms. Sneha Narayan Jhunjhunwala	... Appellant.
V/s.	
Municipal Corporation of Greater Mumbai	... Respondent

Mrs. Anjali Awasthi for the appellant.
Mr. A.K. Nandanwar for the respondent/ Corporation.
Mr. A. K. Saluja for the intervenor.

**CORAM : K. K. TATED, J.
DATED : 25/06/2015.**

PC.:

. Heard learned Counsel for the parties.

2 This Appeal from Order is preferred by the plaintiff challenging the order dated 15.12.2014 passed by the Bombay City Civil Court, Dindoshi declined to grant ad-interim relief.

3 In the present proceeding, the plaintiff is in occupation and possession of Garage no.1 in the society known as Sweet Home, New Brindavan Co.Op. Housing Society, Plot No.5, Sub Plot No.7, 9th Road Extension, Juhu, Vile Parle (W), Mumbai – 400 049. The respondent corporation issued notice under Section 351 of Mumbai Municipal Corporation Act, 1888 dated 30.07.2014 calling upon the appellant to remove unauthorised construction carried out in compulsory open space of the building and stop using for commercial purpose. The plaintiff replied the said notice. On the basis of reply dated 06.08.2014

the Designated Officer-IV, Asst. Engineer (B&F) K/West ward passed an order dated 29.11.2014 holding that plaintiff failed to produce documents to show that Garage was constructed after obtaining permission from the Corporation.

4 Hence, the plaintiff filed L.C. Suit No. 2717 of 2014 in Bombay City Civil Court, Dindoshi challenging notice issued by the respondent corporation under Section 351 of Mumbai Municipal Corporation Act, 1888 as well as the order passed by the Designated Officer. In that suit, plaintiff preferred Notice of Motion no. 2862 of 2014 for an order of injunction restraining the respondent from taking any action as per notice under Section 351 of the said Act as well as order passed by the Designated Officer. The Trial Court declined to grant ad-interim relief. Hence, the present Appeal from Order.

5 The learned counsel Mrs. Avasthi for the plaintiff submits that the suit structure was in existence for last several years. The plaintiff purchased the said structure in the year 2012 from the earlier occupant. She submits that even the society issued the share certificates dated 10.02.2008 in respect of the suit structure in the name of earlier owner/occupant. She further submits that even the plan sanctioned by the corporation in the year 2005, the suit structure was shown as “existing garage to be demolished”. She submits that these two documents show that the suit structure was in existence at least from 2005. She submits that these two documents as well as other documents are not considered by the Trial Court and declined to grant ad-interim relief. She submits that at least these two documents show the existence of the suit structure and therefore, plaintiff is

entitled ad-interim relief till the hearing and final disposal of Notice of Motion. She further submits that if ad-interim relief is not granted, irreparable loss and injury will be caused to the appellant.

6 On the other hand, the learned counsel for the Respondent corporation vehemently opposed the present Appeal from Order. They filed Affidavit-in-Reply dated 05.05.2015 duly affirmed by Mr. T.A. Pawar. The learned Counsel for the respondent submits that in a sanctioned plan of 2005 the suit structure is shown for demolition purpose only. Therefore, the plaintiff is not entitled to any relief in the present proceeding. He submits that even the Architect, who submitted the plan on behalf of owner i.e. Society specifically stated that the said structure is required to be demolished. Hence, plaintiff is not entitled to any relief in the present proceeding.

7 I heard both the sides at length. It is to be noted that Notice of Motion preferred by the plaintiff is pending before the Trial Court. The present Appeal from Order is filed as the ad-interim relief refused by the Trial Court. It is to be noted that the share certificate issued by the society as well as sanctioned plan of 2005 clearly shows existence of the suit structure as on today/when the suit was filed. Even the respondent corporation in their Affidavit-in-Reply dated 05.05.2015 in paragraph 5 admitted the existence of suit structure. The paragraph 5 reads thus:

“5. I say that the building is basically Ground+6th upper floor with using TDR by society. I say that in amended approved plan vide no. CE/7923/WS/AK, dated 05.02.2005, the one Garage is shown as “existence Garage to be demolished”. This amended plan supersedes the previous approved plan approved in 1981.”

8 Considering the documents placed on record and Affidavit-in-Reply filed by the corporation, prima facie I am of the opinion that the plaintiff is entitled to ad-interim relief till the hearing and final disposal of the Notice of Motion, which is pending in Trial Court.

9 Hence, the following order.

a) Appeal from Order is partly allowed.

b) The respondent/corporation are restrained by an order of injunction from taking any coercive action against the plaintiff on the basis of notice under Section 351 of Mumbai Municipal Corporation Act, 1888 dated 30.07.2014 and the order dated 29.11.2014 passed by the Designated Officer-IV Asst. Engineer (B&F) K/West ward, Mumbai till the hearing and final disposal of the Notice of Motion no. 2862 of 2014 in L.c. Suit No. 2717 of 2014.

c) The Trial Court to decide Notice of Motion on its own merits without being influenced of the order passed by this Court.

d) At the request of the learned counsel for the Society/intervenor, liberty granted them to take out appropriate proceeding in Trial Court for joining them as a party and that application to be decided on its own merits.

(K.K.TATED, J.)