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IN THE HIGH COURT OF JUDICATURE AT MUMBAI
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION (L) NO. 338 OF 2015
IN
WRIT PETITION NO. 1244 OF 2014

Municipal Corporation of Greater
Mumbai and another .. Applicants

In the matter between

Shri Anil G.Shah .. Org. Petitioner

Vs.

The State of Maharashtra and others .. Org. Respondents

Shri N.V. Walawalkar, Senior Advocate a/w Shri Vinod Mahadik, for
Applicants.

Shri Anil G.Shah- Respondent (Org. Petitioner) in-person.

**CORAM : A.S. OKA &
MRS. MRIDULA BHATKAR, JJ**
DATED : 01st OCTOBER 2015

P.C. :

. Heard the learned senior counsel appearing for the
applicants. The respondent appearing in-person states that he is not
served with the Notice of Motion.

2. Apart from the prayer for condonation of delay,
essentially the substantive prayer is for recalling the order dated
08/05/2012 passed by the Division Bench of this Court in Civil
Application No. 895 of 2012. Apart from the submission that the
Writ Petition could not have been continued on the Appellate Side,

the learned senior counsel appearing for the applicants submits that there was no prayer made in the Civil Application as regards grant and/or renewal of the license. He submitted that by virtue of the order dated 11/04/2012, the respondent (petitioner) was permitted to carry out amendment to the main Petition relating to the renewal of license. His submission is that in the absence of any prayer in Civil Application regarding the renewal of license, the order dated 08/05/2012 could not have been passed. He further submitted that the case made out in the Notice of Motion is that the applicants were not served with the Civil Application taken out by the respondent.

3. We have perused the order dated 08/05/2012. Clause 4 of the order which is operative part thereof is thus :

“4. In the circumstances, we are of the view that the Applicant should not be deprived of his means of livelihood from the restaurant. We, therefore, direct that the Respondent No.3-Municipal Corporation shall forthwith provisionally renew and keep renewing the Applicant's trade license under Section 394 of the Bombay Municipal Corporation Act, without insisting that the Applicant should obtain a certificate for change of user. Such renewal shall be provisional and subject to the result of this Writ Petition.

4. In the main Petition, there was a prayer (aa) incorporated by way of amendment seeking a direction against the first applicant to forthwith renew and keep on renewing the trade license of the respondent under section 394 of the Mumbai Municipal Corporation Act, 1888 without insisting on the respondent

obtaining a certificate of change of user.

5. In terms of clause 4, a direction was issued to the first applicant – Municipal Corporation to provisionally renew and keep on renewing the trade license of the respondent without insisting on obtaining a certificate for change of user. The Division Bench has clarified that such renewal shall be provisional and subject to the result of the Writ Petition.

6. It is true that the order of refusal to renew the license can be subjected to an Appeal under the statute. However, the order which is sought to be recalled is only an interim order, by which provisional renewal is directed to be granted and that also subject to the result of the Writ Petition. If there is any legal impediment created in the way of renewal of the license for a particular term, since the main Writ Petition is pending, the Municipal Corporation can always take out appropriate proceedings therein. Suffice to say that no case is made out for recalling the interim order considering the nature of directions issued thereunder.

7. Subject to what is observed above, the Notice of Motion is rejected.

(MRS. MRIDULA BHATKAR, J)

(A.S.OKA, J)

CERTIFICATE

**Certified to be true and correct copy of the original signed
Judgement/Order.**