

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****APPEAL FROM ORDER (ST) NO. 87 OF 2016****ALONGWITH****CIVIL APPLICATION (ST) NO. 88 OF 2016****IN****APPEAL FROM ORDER (ST) NO. 87 OF 2016****Iqbal Mohammed Shaikh****..... Appellant****VERSUS****Municipal Corporation of Greater
Mumbai & Ors.****..... Respondents**

Mr.Akbarali Nasikwala for the Appellant.

Mr.A.V.Diwate for Respondent No.1/B.M.C.

CORAM : R.D. DHANUKA, J.**DATED : 12th JANUARY, 2016****P.C.**

By this appeal from order, the appellant has impugned the order passed by the learned trial judge on 17th December, 2015 refusing to grant ad-interim relief. The respondent no.1 Corporation has issued a notice under section 351 of the Bombay Municipal Corporation Act.

2. It was the case of the appellant that the alleged unauthorized construction which was referred in the notice issued under section 351 of the Bombay Municipal Corporation Act was already carried out under a permission granted by MHADA pursuant to the repair plan submitted by the appellant, a copy whereof is annexed at page 89 of the appeal. He submits that there was no new construction carried out by the appellant which was alleged in the said notice issued under section 351 of the Bombay Municipal Corporation Act.

3. Neither the Municipal Corporation nor MHADA had filed any affidavit in reply before the learned trial judge to controvert the position that the structure which was subject matter of 351 of the Bombay Municipal Corporation Act was a structure other than the structure carried out pursuant to the repair plan or that the repair work carried out by the appellant itself was without any permission obtained from MHADA or from Municipal Corporation.

4. In my view prima facie case is thus made out by the appellant for grant of ad-interim relief. I, therefore, pass the following order :-

(a) The defendants to the suit are directed to file affidavit in reply within four weeks from today and shall serve a copy thereof upon the appellant's advocate simultaneously.

(b) Rejoinder if any, shall be filed within two weeks from the date of service of affidavit in reply. During the pendency of the notice of motion before the learned trial judge, there shall be ad-interim relief in terms of prayer clause (a) of the notice of motion which shall be in force during the pendency of the notice of motion and for a period of two weeks thereafter.

(c) The learned trial judge shall dispose of the notice of motion without being influenced by the observations made in the impugned order and shall decide the the same on its own merits expeditiously. The learned trial judge shall make an endeavor to dispose of the notice of motion within one year from today.

(d) Appeal from order is disposed of in the aforesaid terms.

In view of the disposal of the appeal from order, civil application does not survive and is accordingly disposed of. No order as to costs.

[R.D. DHANUKA, J.]