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

*APPEAL FROM ORDER (ST.) NO. 7424 OF 2016
with
CIVIL APPLICATION (ST.) NO. 7425 OF 2016*

Mrs. Vinni Khemchand Bhagnani. ... Appellant/Applicant.

V/s.

Municipal Corporation of Greater Mumbai. ... Respondents.

Mr. R.A. Thorat, Sr. Advocate a/w. Pankaj Dwivedi for the
Appellant/Applicant.

Mr. A.V. Diwate for the Respondent - BMC.

CORAM : N.M. Jamdar, J.

13 April, 2016.

P.C. :-

Heard learned Counsel for the parties. Admit. Taken up for
final disposal by consent of parties.

2. The Appellant challenges the order passed by the City Civil
Court on 12 February 2016 rejecting the ad-interim order in Notice of
Motion taken out by the Appellant in L.C.Suit No. 355 of 2016. The
short question that arises is whether it can be said that the Appellant is
not entitled to grant of ad-interim protection till the Notice of Motion is
heard. Prima-facie it does not appear to be a case of complete absence of

any documentation. A sale deed has been placed on record, which according to the learned Counsel for the Appellant indicates that the area more than 170 sq.ft. was conveyed to the Appellant. The Co-operative Housing Society where the premises are situated has also written in favour of the Appellant which indicates that the structure in question has not caused any nuisance as on date to any member of the society. The learned Counsel for the Appellant submitted that the Appellant is a subsequent purchaser of the out house of the additional structure/area as mentioned in the sale deed and the sanctioned plan is of the year 1980.

3. To my mind the Appellant has crossed the threshold of at least deserving protection till the Notice of Motion for interim relief is heard on merits. Since the Notice of Motion for interim relief is yet to be decided and that the protection granted by the City Civil Court on 12 February 2016 which is continued by this Court, be continued till the disposal of the Notice of Motion. Order accordingly.

4. It is however made clear that the consideration of interim relief and the Notice of Motion by the City Civil Court will be on its own merits without being influenced by the continuation of the ad-interim order. It will be open to the Municipal Corporation to apply to the City Civil Court for early disposal of the Notice of Motion.

5. The Appeal from Order and Civil Application are accordingly disposed of .

(N.M. Jamdar, J.)