

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER ST NO.9376 OF 2016
WITH
CIVIL APPLICATION ST NO.9378 OF 2016**

Suresh Yalappa Shetty

..Appellant

Vs.

The Municipal Corporation of Greater Mumbai

..Respondents

Mr. P. J. Thorat i/b Mr. A. L. Shukla for the Appellant / Applicant

Mrs. M. R. Bhoir a/w Mrs. Madhuri More for the Respondent- BMC

CORAM : R. M. SAVANT, J.

DATE : 23rd JUNE, 2016

P.C.

1 The Order dated 18-3-2016 passed by the Learned Judge of the City Civil Court, Dindoshi, Borivali Division, Mumbai, is taken exception to by way of the above Appeal From Order.

2 The grievance of the Appellant is to the effect that though the notice under Section 351 of the Mumbai Municipal Corporation Act is given in respect of the ground floor as well as the first floor of the structure in question. The Learned Judge has issued a direction to the Respondents herein i.e. MCGM who is the Defendant to the Suit to allow the Plaintiff to file a reply to the impugned notice regarding the ground floor only and not regarding the first floor and then to consider the same and pass a fresh order regarding the ground floor and communicate such order to the Plaintiff. This direction has

been issued by the Learned Judge in view of the fact that there is already a Suit pending bearing No.746 of 2011 filed by the Plaintiff and in that Suit Notice of Motion filed by the Plaintiff in respect of both the floors has been dismissed for default. Hence whilst directing the MCGM to pass orders pursuant to the said notice issued under Section 351 the ground floor is only protected by way of ad-interim relief. It seems that present notice issued under Section 351 dated 10-3-2016 is the third such notice issued by the MCGM in respect of Plaintiff's structure. The instant notice dated 10-3-2016 covers both the ground floor and the first floor.

3 It is an undisputed position that no order has been passed by the Designated Officer pursuant to the said notice. If the notice is in respect of both the ground floor and first floor, then the Plaintiff is entitled to reply to the said notice both in respect of ground floor and first floor. It is for the Designated Officer to pass appropriate orders considering the case of the Plaintiff qua the said notice. However, in my view, the Trial Court has erred in restricting the reply of the Plaintiff only to the ground floor and also granting ad-interim relief in respect of the ground floor only. Hence to the said extent, the order would have to be set aside and modified. It is made clear that the Plaintiff would be entitled to file his reply in respect of the first floor also and the Designated Officer would thereafter pass appropriate orders both in respect of the ground floor and the first floor. Till the order is passed by the

Designated Officer, ad-interim relief which is granted by the Trial Court would also operate in respect of the first floor.

4 With the aforesaid directions the above Appeal From Order is disposed of.

5 In view of the disposal of the above Appeal From Order, the Civil Application St. No.9378 of 2016 does not survive and to accordingly stand disposed of as such.

[R.M.SAVANT, J]