

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

***APPEAL FROM ORDER NO. 370 OF 2016
WITH
CIVIL APPLICATION NO. 482 OF 2016***

Shri Parshuram Ramchandra Patil,
10th Road, Opp. Sukhmani Society,
JVPD Scheme, Juhu, Mumbai – 400 049. ... Appellant/Applicant

v/s

The Municipal Corpn. of Gr. Mumbai,
Mumbai. ... Respondent

Ms.Jyoti Chavan along with Kunal Phoole for the appellant in both
appeals and applicant in both civil applications.

Mr.A.V.Diwate for the respondent B.M.C. in both appeals.

CORAM: N.M. Jamdar, J.

DATED : 12 April 2016

ORAL ORDER:

Admit. Taken up for final disposal by consent of parties.

2 The Appellant challenges the order passed by the City Civil Court, Mumbai, dated 19 March 2016, refusing to grant ad-interim relief in notice of motion taken out by the Appellant.

3 The short question that arises is, whether the Appellant has made out a case for grant of ad-interim relief till the notice of motion is heard by

the City Civil Court.

4 The premises in question appear to be used as a shop. The present structure is shown in the photograph as a shop under the name of M/s.Ganesh Milk Centre &Mahesh Communication. In the notice, the Corporation has stated that the shop is on footpath and does not have any licence as required under Section 313 of the Mumbai MunicipaolCorporation Act. The Appellant had produced copies of N.A. order dated 7 April 1992, licences issued in his favour for using as commercial. It is the case of the Appellant that similar notices were issued in the past, however, they were not acted upon by the Respondent Corporation. In the Appeal from Order No.369 of 2016, which was disposed of today, I have observed that the Appellant therein was entitled to the ad-interim protection. The photographs which are placed on record show that the structure in question in the present appeal and in the Appeal from Order No.369 of 2016 are close to each other.

5 Considering the documents that have been placed on record, I am of the opinion that this was not a case where it can be said that no documents at all are in possession of the Appellant and that the Appellant is not entitled even to have its notice of motion heard on merits. That being the position, it is not necessary to discuss the evidence in detail any further. The photographs which have been placed on record, *prima facie*, at this stage, do not indicate any obstruction to the passerby. It is, however, made clear that the City Civil Court will consider the notice of motion on its own merits and irrespective of the observations made in this order, or that this Court had granted an ad-interim protection by passing of status-

quo on 31 March 2016. Accordingly, the appeal is disposed of by directing that the order of status-quo granted by this Court on 31 March 2016, be continued till the disposal of the notice of motion.

6 It will be open to the Corporation seek early hearing of the notice of motion. The fact that the ad-interim relief granted by this Court and is continued will not influence the City Civil Court in disposing of the notice of motion on merits.

7 The appeal is disposed of in above terms.

8 In view of disposal of the appeal, the civil application does not survive and is disposed of.

(N. M. JAMDAR, J.)