

2. Heard the learned Counsel for the Appellant and the learned Counsel for the Respondents. This appeal has been preferred by the Appellant-Plaintiff against an ad-interim order dated 1st April, 2015 passed

by the learned Judge, City Civil Court, Mumbai, whereby ad-interim relief has been refused in a draft Notice of Motion in L.C.Suit no.862 of 2015. The dispute pertains to a structure which is described as Zavli shed. The learned Judge in the impugned order has observed that the documents which are placed on record at the ad-interim stage definitely did not reflect that the structure was of BM walls and AC sheet roof and was not an authorised structure. It was also described as a zavli shed in the city survey map on the record of the Corporation would indicate. The plaintiff did not produce any permission granted by the Municipal Corporation for construction of a structure as it stands in present nature and being complained of. The learned Judge, therefore, observed that the Appellant-Plaintiff had failed to establish any prima facie case for any ad-interim relief.

3. In this appeal, on behalf of the Appellants, a communication dated 4th June,1974 stated to be a repair permission is sought to be relied upon. The contention on behalf of the Appellant on the basis of this document is that the suit structure is authorised and that the Municipal Corporation has permitted the construction of the said structure on the basis of this communication dated 4th June,1974. Mr.Sharma, learned Counsel for Respondent No.2 has disputed this document on various grounds. It is also submitted this is a false document and would not assist

the Appellant-Plaintiff. All these issues cannot be adjudicated in this Appeal from Order which arises out of an ad-interim order. If the Appellant has some new material to justify that this structure is legal and authorised then the Appellant ought to place such document for consideration of the Trial Court and seek injunctory relief on the basis of such material. Needless to observe that the Respondents have their own contentions on this and they are also required to be heard on this issue, on the merits of the matter.

4. In the light of the above observations, this Appeal from Order does not call for any interference. It would be open for the Appellant-Plaintiff to approach the Trial Court with such new material if so advised.

5. Learned Counsel for the Appellant submits that the Appellant would move the Trial Court as early as possible and in any case within a period of two weeks from today for any urgent ad-interim order on the basis of such new documents with prior notice to the Respondents. As the Appellant intends to move the trial Court on this new material, the Municipal Corporation shall not take any coercive action in that regard for a period of two weeks. The Appellant shall not seek any further extension of the order for any reason.

6. It is clarified that under the garb of the status quo order, the Appellant shall not in any manner change the status of the premises or undertake any further addition, alteration and construction on being complained on behalf of Respondent No.2.

7. Needless to observe that the learned trial Judge shall decide any fresh application as may be moved on behalf of the Appellant on its own merits.

8. The Appeal from order is accordingly disposed of in the above terms. No order as to costs.

9. As Appeal from is disposed of, the Civil Application would also not survive and the same is accordingly disposed of.

10. Parties to act on the authenticated copy of the order.

(G. S. KULKARNI,J.)