

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

***APPEAL FROM ORDER NO. 375 OF 2016
ALONG WITH
CIVIL APPLICATION NO. 489 OF 2016***

Mr.Sayyad Kadarali Ahmadali,
Business at Irla society Road, Shastri Nagar,
Irla Time Centre, Vile Parle (W),
Mumbai – 400 056. ... Appellant/Applicant
v/s
The Municipal Corpn. of Gr. Mumbai. ... Respondent

Mr.Dinesh Kumar Pandey for the appellant/applicant.

None present for the respondent.

CORAM: N.M. Jamdar, J.

DATED : 12 April 2016

ORAL ORDER:

Taken on production board in view of the *praecipe* filed by the Appellant.

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

2 The Appellant filed L.C. Suit No.736 of 2016, seeking a declaration that the notice dated 10 October 2008 issued under Section 314 of Mumbai Municipal Corporation Act and the order passed by the Designated Officer on 10 March 2016, are null and void and not binding

on the Appellant and consequential injunction.

3 The notice issued on 10 October 2008 was earlier challenged by the Appellant by filing the suit in which the authorities were directed to pass a speaking order. The competent authority has accordingly passed the speaking order which is challenged by the Appellant in the suit.

4 The competent authority has recorded that the structure is on the footpath and is causing inconvenience to the pedestrians. The Appellant is carrying on the activity on footpath without a requisite licence under Section 313 of Mumbai Municipal Corporation Act, and the Appellant is not entitled to the benefit of circular issued.

5 Learned counsel for the Appellant sought to rely upon the documents which were produced before the authorities. He submitted that the suit structure is not on the footpath but is in slum area. For that purpose, learned counsel for the Appellant has relied upon a receipt, which is of the amount paid by the Appellant for getting a photo-pass. However, what is relied upon is only a receipt thereof. No photo-pass has been issued. Learned counsel for the Appellant submitted that the Appellant has made various representations for getting the necessary documents, however, they have not been issued. The Appellant is challenging the order passed by the competent authority which has concluded that the structure is on the footpath. The Appellant has not been able to show by producing any cogent material that this conclusion is not correct. The assertion of the Appellant that the structure is in slum area is not backed up by any cogent documentary material. In the case of *Sopan Maruti*

Thopate v/s Pune Municipal Corporation¹, the Division Bench of this Court has cautioned against grant of ad-interim orders merely out of sympathy, especially when the structures are occupying footpath and roads.

6 In the circumstances, no perversity is found in the discretion used by the City Civil Court Judge in refusing to grant ad-interim relief.

7 The appeal is accordingly dismissed.

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

(*N. M. JAMDAR, J.*)

1 1996 (2) Mh.L.J. 963.