

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****Appeal from Order (ST) NO. 11870 OF 2016**

Smt. Anita Bernard Perera ...Appellant
Versus
Municipal Corporation Of Greater Mumbai ...Respondent

None for the Appellant.

Mr.S.K.Sonawane, for the Respondent-BMC.

CORAM: G. S. KULKARNI, J.

DATED: 22nd April, 2016

PC:-

1. None for the Appellant. By this appeal, the appellant assails the ad-interim order dated 6 April 2016 passed by the learned Judge of City Civil Court at Dindoshi, Mumbai. By the impugned order, an ad-interim protection as prayed in the draft notice of motion came to be rejected by the learned Trial Judge.

2. I have heard Mr.Sonawane, learned Counsel appearing for the Corporation. Learned Counsel for the Corporation submits that the notice in question was not given in respect of the full structure but it was issued for vertical extension and the designated officer has considered all the

documents in regard to the unauthorised extension to the said structure and has also passed a reasoned order. He submits that the Appellant failed to give any description of the suit premises which was required to be furnished in compliance of requirement of Order VII Rule 3 of the Code of Civil Procedure, inasmuch as the height of the suit structure was not disclosed. It is submitted that the height of the appellant's structure as appearing in the photopass issued to the appellant was 9 ft. whereas the Corporation has noticed that the height of the structure was 24 ft. and accordingly, the notice under Section 351 of the Mumbai Municipal Corporation Act, dated 28 January 2016 came to be issued to the appellant in respect of the unauthorised vertical extension of the room of the existing ground floor room as more particularly described in the suit notice. An order directing demolition of the suit structure came to be passed on 16 February 2016 in pursuance of the said notice under Section 351 of the M.M.C.Act.

3. It is submitted that the Appellant-Plaintiff had also failed to justify as how the said structure could be said to be authorised and would be permitted by the Municipal Corporation. No document in that regard was placed before the Municipal Authority. Further, this structure was not a structure which was in existence prior to the datum line i.e. 17 April 1964. The only document which was pressed into service by the Appellant/Plaintiff was the photopass dated 29 July 2003 which would not

assist the Appellant/Plaintiff.

4. I have perused the impugned order as also the documents placed on record of the paper book. In the light of the observations as made in the impugned order and considering the submissions as advanced on behalf of the learned Counsel appearing for the Respondent-Corporation, I do not find that there is any error in the orders passed by the learned Trial Judge in refusing the ad-interim relief. No interference is therefore called for at this stage. The Appeal from Order is devoid of any merit and is accordingly dismissed. No order as to costs.

5. Needless to observe that the Trial Court shall decide the Notice of Motion on its own merit and without being influenced by the observations made in the impugned order.

6. The Civil Application would not survive and accordingly stands disposed of.

(G. S. KULKARNI,J.)