

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

**APPEAL FROM STAMP ORDER NO.14937 OF 2016
WITH
CIVIL APPLICATION STAMP NO.14938 OF 2016**

Mr. Pradip Ramji Mane : Appellant/Applicant.

Versus

**Assistant Municipal Commissioner
of BMC's L Ward, Kurla(West), Mumbai
and anr.**

: Respondents.

**Ms. K P Reshma Ravi i/by K P Ravi & Co. for the Appellant/Applicant.
Mrs. M R Bhoir for the Respondents.**

CORAM : R. M. SAVANT, J.

DATE : 17th June 2016

P.C.

1 The order dated 12/05/2016 passed by the learned Judge of the City Civil Court for Greater Bombay rejecting the Application moved by the Appellant original Plaintiff for ad-interim relief is taken exception to by way of the above Appeal from Order.

2 A notice under Section 354A of the Mumbai Municipal Corporation Act came to be issued to the owner/occupier one Shri Ashraf in respect of a shop i.e. Kumkum Stores situated near City Hospital, Kurla (West), Mumbai – 70. The said premises are situated in what is known as Ashraf Seth Chawl. The Appellant herein claims to be a tenant in respect of the said premises. The Appellant in paragraph 4 of the plaint has averred to the

following effect :-

“The Notice refers Mr. Ashraf as he occupier and owner of Kummum General Stores near City Hospital. Kumkum General Stores is the Suit Shop. It is owned by the Plaintiff. The Plaintiff therefore accepted the Notice even though it was not addressed to him.”

The Plaintiff therefore admits that he has accepted the notice though it was not addressed to him. The Plaintiff apprehending that the offending structure i.e. the 1st floor would be demolished, filed the suit in question and the notice of motion for restraining the Municipal Corporation of Greater Mumbai from demolishing his structure. The Plaintiff before the Trial Court raised a contention that the notice was not addressed to him. The Plaintiff also sought to rely upon various documents to show that he was in possession and that the structure was in existence since last 20 years. In so far as the alleged infirmity in respect of the notice is concerned, the Trial Court observed that though the notice was addressed to the said Shri Ashraf, the Plaintiff has admitted that he has accepted the said notice, though not addressed to him. In so far as the documents are concerned, it was the case of the Respondents that the said documents do not show the existence of the first floor. The Trial Court was therefore of the view that the Plaintiff was not entitled to the ad-interim temporary injunction.

3 In my view, having regard to the reasons mentioned by the Trial Court in the impugned order, no case for interference in the Appellate

Jurisdiction of this Court is made out. The above Appeal from Order is accordingly dismissed. In view of the dismissal of the Appeal from Order, Civil Application Stamp No.14938 of 2016 does not survive and the same to accordingly stand disposed of as such. The hearing of the Notice of Motion in question is expedited.

[R.M.SAVANT, J]