

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER St NO. 16038 OF 2016
WITH
CIVIL APPLICATION ST NO.16040 OF 2016**

Raju Tammya Gowda

..Appellant

Vs.

Municipal Corporation of Greater Mumbai

..Respondent

**Mr. M. S. Menon a/w Mr. A. A. Siddiquie i/b A.A.Siddiquie & Associates
for the Appellant / Applicant
Mrs. M. R. Bhoir for the Respondent**

**CORAM : R. M. SAVANT, J.
DATE : 20th JUNE, 2016**

P.C.

1 The order dated 6-6-2016 passed by the Learned Judge of the City Civil Court, Dindoshi, Borivali Division, Mumbai, is taken exception to by way of the above Appeal From Order by the Appellant original Plaintiff. By the said order, the application for interim reliefs filed by the Plaintiff by way of draft Notice of Motion in the Suit in question being L.C. Suit No.1411 of 2016, came to be rejected. A notice under Section 351 of the Mumbai Municipal Corporation Act dated 16-3-2016 came to be issued to the Plaintiff alleging unauthorised construction carried out by the Plaintiff to the extent of 11'9" x 34'9" of brick masonry wall and A. C. sheet roof at site.

2 The Plaintiff filed his reply to the said Notice pursuant to which the Designated Officer passed an order on 18-5-2016 holding that the notice structure is unauthorised and directed to remove the same within a period of 7 days. In support of his case that the suit structure has been in existence prior to the datum line i.e. 1964, the Plaintiff relied upon various documents in the nature of ration card that was issued on 7-4-2000, electricity bill for January 2013, copy of registration certificate issued under the Bombay Shops and Establishment Act, 1948, which the Trial Court has held that appears to be of the year 1991. The copies of payment of land revenue and letter of Talathi, Andheri (W) dated 8-2-2010. The Trial Court having regard to the said documents held that the Designated Officer has rightly held that the structure is unauthorised as none of these documents are prior to the datum line. The Trial Court also adverted to the fact that the Plaintiff had not given a proper description of the suit premises in terms of Order VII Rule 3 of the Civil Procedure Code.

3 Before the Trial Court as well as this Court reliance was sought to be placed on a communication dated 25-1-2007 of the Assistant Commissioner “K” West ward. By the said communication, the said officer had informed the Plaintiff that notice under Section 314 of the MMC Act has been withdrawn. It seems that the said notice was withdrawn in view of the fact that the structure

or part thereof which was coming within the road alignment which road was constructed by the MMRDA, had already been removed by the Plaintiff. The Trial Court in the said circumstances did not countenance the said communication dated 25-1-2007. Before this court also the Learned Counsel for the Appellant sought to lay reliance on the said contention to contend that once having withdrawn the notice under Section 314 of the MMC Act in the year 2007, the MCGM could not have issued a notice under Section 351.

4 In my view, it is not possible to accept the said contention urged on behalf of the Appellant especially having regard to the circumstances in which the notice under Section 314 came to be withdrawn. It is also required to be noted that the said communication dated 25-1-2007 nowhere states that the structure is tolerable as being in existence before the datum line. In my view, the order passed by the Learned Judge of the City Civil Court Mumbai at an ad-interim stage having regard to the material on record cannot be faulted with. No case for interference is therefore made out, the above Appeal From Order is accordingly dismissed.

5 In view of the dismissal of the above Appeal From Order, the Civil Application St. 16040 of 2016 does not survive and to accordingly stand disposed of as such.

6 The Learned Counsel appearing for the Appellant prays for continuation of the protective order passed by the Trial Court which is in operation. The said prayer is rejected.

[R.M.SAVANT, J]