

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

**APPEAL FROM ORDER NO. 753 OF 2014
ALONG WITH
CIVIL APPLICATION NO. 917 OF 2014**

Mr.Haji Maqsood Hussain Safvi ... Appellant/Applicant

v/s

The Municipal Corpn. of Gr. Mumbai
& anr. ... Respondents

Mr.R.D.Soni i/by Omkar Kulkarni for the appellant/applicant.

Mr.Anil Singh, senior advocate along with A.V.Diwate for Resp.
No.1 B.M.C.

Ms.Varsha Palav i/by Santosh Pawar for Resp. No.2.

CORAM: N.M. JAMDAR, J.

DATED : 21 MARCH 2016

P.C.:

On 14 March 2016, following order was passed and the matter was adjourned for directions.

'P.C.:

The appellant challenges the order passed by the City Civil Court dated 21 June 2014 disposing of the Notice of Motion No.257/2008.

2. The appellant had challenged the notice dated 29 January 2008 calling upon the appellant to restore the structure to its original dimension, that is length, breadth,

height, within 4 days from 4 February 2008, failing which it was stated that it would be removed at the risk of the appellant.

3. *In the impugned order, the learned City Civil Court Judge, at two places has recorded a categorical statement made by the learned counsel for the appellant that the appellant is ready to restore the structure. Mr.Soni, the learned counsel for the appellant on instructions from the appellant, who is present in the Court, states that the appellant is ready to abide by the notice. He states that however, the respondent/corporation and the private respondent are not permitting the appellant to do so.*

4. *Mr.Singh, the learned Senior Advocate for the Municipal Corporation submitted that if the appellant abides by the notice issued the Municipal Corporation, they cannot have any objection. It is therefore not necessary to keep the appeal as well as the suit pending as the appellant is ready to abide by the impugned notice and the Municipal Corporation has no objection if the appellant abides by the same.*

5. *Accordingly by accepting the statement of the learned counsel for the appellant on instructions that the appellant will restore the suit structure to its original dimension, as stated in the impugned communication dated 29 January 2008, Appeal from order can be disposed of.*

6. *At this stage, learned counsel for the appellant and Senior advocate for the respondent corporation states that the matter be taken up on 17/3/2016 for determining the exact modalities for restoration of the structure.*

7. *Stand over to 17/3/2016 for directions.'*

2 Learned senior advocate appearing for the Corporation states that, dimensions of the original structures are available on the file

of the Municipal Corporation which file has already been inspected by the Appellant. It is also open to the intervenor to inspect the said file. Since this is the official measurement available in Municipal records, the restoration of the structure will have to be as per the record available with the Corporation.

3 The appeal is accordingly disposed of in above terms.

4 Learned counsel for the Appellant requests for some time to comply with the notice. The same is granted for a period of three months from today on condition that the Appellant submits an affidavit reiterating the position that he will restore the structure to its original dimensions, as per the Municipal record and that will not create any alterations therein or third party rights. If this affidavit is not filed within a period of two weeks from today, the protection granted will cease to operate.

5 In view of disposal of the appeal, the civil application does not survive and is disposed of.

(N.M. JAMDAR, J.)