IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 955 OF 2015
WITH
CIVIL APPLICATION NO. 1169 OF 2015

Mr.Rajendra Badriprasad Chawla,
Shop No.1, Ashapura Coop. Society,
Bldg. No.2, Near Guru Nanak Hospital,
Bandra (E), Mumbai – 400 051. … Appellant/Applicant

v/s

The Municipal Corpn. of Gr. Mumbai,
& ors. … Respondents

Mr.J.N. Jayale for the appellant/applicant.

Mr.A.V.Diwate for the respondent B.M.C.

CORAM: N.M. JAMDAR, J.

DATED : 29 MARCH 2016

ORAL ORDEER:

Heard learned counsel for the Appellant.

2 The Appellant has filed Suit No.530 of 2015, seeking to restrain the Respondent Corporation from acting upon the notice dated 29 August 2012 and 8 January 2015, and the order passed on 20 January 2015. The notice of motion taken out by the Appellant has been dismissed by the impugned order. The notice

structure is a shed in front of restaurant/shop run by the Appellant. The Appellant has not been able to show that this structure is either erected with permission or protected under any policy. Therefore, the discretion used by the City Civil Court, considering the scope of the suit after the amendment to Section 515-A of the Mumbai Municipal Corporation Act, cannot be stated to be perverse.

3 Learned counsel for the Appellant submitted that the Appellant now be permitted to apply for regularization and the structure be protected in the meanwhile. The notices are issued in the year 2012. The Appellant has contested the notices and thereafter has filed the suit. The notice of motion has been argued, even the appeal from order is argued and at the stage of dismissal of the appeal, the Appellant seeks to make an application for regularization, which request presupposes that the structure is not legal.

4 The Appellant is not a rustic villager. An educated litigant knows fully well whether his structure is erected with requisite permission or that he has adequate documents to show that it is protected. A tendency has grown to litigate, then under interim orders which are often sought for citing grounds of urgency, then continue to enjoy the illegal structure, and when end of the road is reached, seek protection to apply for regularization to start another round of litigation. This must be discouraged. Court proceedings are not for taking chances. Therefore, at this stage, I am not inclined to grant permission to the Appellant who ought to have

made his choice at the beginning of the litigation without putting the Municipal Corporation through litigation and incur expenses, out of public funds.

5 Learned counsel for the Appellant then submitted that the Appellant will remove the notice structure within a period of four weeks from today. This statement is accepted. Since the Appellant has undertaken to comply with the notice and remove the structure within a period of four weeks from today, the Respondent Corporation will not demolish the same for a period of four weeks, by taking coercive action. If it is not removed within period of four weeks from today, the Respondent Corporation will be free to take action without further notice.

6 The appeal is accordingly disposed of.

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

(N. M. JAMDAR, J.)