

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.884 OF 2016
IN
APPEAL FROM ORDER NO. 700 OF 2016**

Kailash Ramchandra Shirke	..Applicant
Vs.	
Municipal Corporation of Greater Mumbai	..Respondent

Mr. R. A. Thorat, Senior Advocate, i/b Mr. R. P. Surve for the Applicant
Mrs. Madhuri More for the Respondent

CORAM : R. M. SAVANT, J.
DATE : 27th JULY, 2016

P.C.

1 The above Civil Application has been filed for interim stay of the impugned order pending the above Appeal From Order. The Applicant has been non suited on the ground that he could not produce the original sanctioned plan or the documents to show that the structure was in existence prior to 1-2-1962. The Applicant / Appellant is a tenant in respect of the suit premises being Shop No.12 wherein he is running a hair cutting salon. The unauthorised construction alleged against the Applicant is lowering of plinth by 5 inches and constructing a partition wall.

2 It is required to be noted that the landlord filed a Suit in the Small Causes Court being R.A.E. & R Suit No.533/788/2006 which Suit was dismissed on 18-12-2008 and the Appeal filed by the landlord was dismissed

by two Judges Bench of the Small Causes Court by order dated 6-5-2016. There is no dispute about the fact that it is at the behest of the landlord that the notice under Section 351 came to be issued. The notice is also challenged on the ground of malafides. It is the case of the Applicant / Original Plaintiff that he has made no changes in the structure and that the situation of the structure is as it is since he has become a tenant. It appears that outside the suit shop the footpath has been paved by putting the paver blocks and therefore it is the contention of the Learned Senior Counsel appearing on behalf of the Applicant that the same results in an impression that the plinth has been lowered. It is further required to be noted that there was ad-interim order operating in favour of the Applicant since 15-3-2012 till the Notice of Motion was decided.

3 In my view, it would just and proper to allow the above Civil Application in terms of prayer clauses (a) and (b). The said relief would operate pending the hearing and final disposal of the above Appeal From Order. However, it is made clear that the pendency of the above Appeal From Order would not be an impediment for the Trial Court to proceed with the Suit in question which would undoubtedly be tried on its own merits and in accordance with law.

4 The Civil Application is accordingly disposed of.

[R.M.SAVANT, J]