

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

**APPEAL FROM ORDER NO.823 OF 2014
ALONGWITH
CIVIL APPLICATION NO.991 OF 2014**

Bharat Baban Kokne

.. Appellant/Applicant

Versus

**The Municipal Corporation of Greater Bombay
and others**

.. Respondents

Mr. D. W. Bhosale for the Appellant/Applicant.

Mrs. Madhuri More for the Respondent BMC.

CORAM : R.M. SAVANT, J.

DATE : 20th JULY 2016

PC.

1 The above Appeal from Order takes exception to the order dated 08.08.2014 passed by the Learned Judge of the City Civil Court, Greater Mumbai, by which order, ad-interim reliefs came to be rejected. The Learned Judge however in paragraph 4 of the impugned order has observed that a detailed reply of the MCGM is necessary in the matter to reach to the conclusion as to whether the Plaintiff has made out prima-facie case to grant relief as prayed for. However, in spite of making such observations, the Learned Judge has rejected the application for ad-interim reliefs. The above Appeal from Order had come up for admission

on 21.08.2014 on which a Learned Single Judge of this Court has granted ad-interim relief to the following effect :- (clause 4)

“In the meantime, respondents shall not act upon the notice dated 10.05.2014 issued under section 351 of the Mumbai Municipal Corporation Act, 1888 subject to condition that appellant shall not alter the nature of the notice structure.”

The said ad-interim relief is continuing in the above Appeal from Order till date. The Learned Counsel appearing for the Mumbai Corporation of Greater Mumbai is not in a position to state whether the affidavit in reply has been filed by the MCGM in the said Notice of Motion in the Trial Court. In my view, no useful purpose would be served by keeping the above Appeal from Order pending indefinitely having regard to the fact that the Notice of Motion filed by the Appellant/original Plaintiff is pending in the City Civil Court Greater Mumbai. Hence, the above Appeal from Order is disposed of by issuing following directions :-

- I) The MCGM to file its affidavit in reply to the Notice of Motion within three weeks from date if not already filed.
- II) The Trial Court to hear and decide the Notice of Motion expeditiously and latest by 31.10.2016.
- III) The ad-interim order which is in operation in the above Appeal from

Order and which has been extracted hereinabove would continue to operate pending the disposal of the Notice of Motion.

IV) Needless to state that the contentions of the parties are kept open for being urged before the Trial Court.

V) The Trial Court to hear and decide the Notice of Motion on its own merits and in accordance with law uninfluenced by the impugned order or the instant order.

2 With the aforesaid directions, the Appeal from Order is disposed of.

3 In view of the disposal of the Appeal from Order, the Civil Application does not survive and to accordingly stand disposed of as such.

[R.M. SAVANT, J]