

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Appeal from Order No. 1102 OF 2013
with
Civil Application No.1300 Of 2013

Mr. Joseph Pereira	...Appellant
<i>Versus</i>	
Municipal Corporation Of Greater Mumbai	...Respondent

Mr.Damale with Mr.Sanjeev R.Singh, for the Appellant.

Mrs.Madhuri More, for B.M.C.

CORAM : G.S. KULKARNI, J.

DATE : 15 NOVEMBER 2016.

PC. :

1. Heard Mr.Damale, learned Senior Counsel appearing for the Appellant-Plaintiff and Ms.Madhuri More, learned Counsel for Respondent-Defendant - Municipal Corporation.

2. This appeal has been filed by the Appellant-Plaintiff challenging the order dated 4 October 2013 passed by the learned Judge, City Civil Court, Mumbai and Dindoshi whereby ad-interim relief in draft Notice of Motion taken out by the Appellant has been

refused. This Court by an order dated 7 October 2013 has granted an ad-interim protection directing the Respondent/Defendant not to take any further steps based on the notice impugned in the suit. There is no dispute that this ad-interim protection granted by this Court on 7 October 2013 is continued till date. The challenge in the suit is to a notice issued under Section 351 of the Bombay Municipal Corporation Act. The Notice of Motion is pending before the learned Trial Court. Though the learned Counsel for the Municipal Corporation has opposed this appeal and has made submissions in support of the impugned order, in facts and circumstances of the case and considering the above facts that the ad-interim protection granted by this Court is continued from 7 October 2013 and is operating till date, in my opinion, interest of justice would be served if the Notice of Motion itself be taken up for hearing by the learned Trial Judge. The parties are at liberty to approach the Trial Court with a request to take up the hearing of the Notice of Motion which shall be considered by the learned Trial Judge on its own merit.

3. Ad-interim protection granted by this Court by order dated 7 October 2013 shall continue to operate till the Trial Court

decides the Notice of Motion and if an order adverse to the Appellant is passed, for a period of two weeks thereafter.

4. Appeal is disposed of in the above terms. No costs.
5. Civil Application No.1300 of 2013 does not survive. It is accordingly disposed of.
6. Parties to act on the authenticated copy of this order.

(G.S.KULKARNI, J.)