

**CIVIL APPLICATION NO. 459 OF 2016
IN
APPEAL FROM ORDER (STAMP) NO. 30495 OF 2015
WITH
CIVIL APPLICATION (STAMP) NO. 30497 OF 2015**

Mumbai Municipal Corporation of Gr. Mumbai ...Applicant

Versus

Indira Nagar Welfare Association & ...Respondents
Ors.

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Mr. N. V. Walawalkar, Sr. Advocate a/w. Mr. A. V. Diwate & Mr. S. K. Sonawane for the Applicant.
None for the Respondents.

CORAM : G. S. KULKARNI, J.
DATE : 29th APRIL, 2016.

P. C. :

1. Not on board. Taken on board at the instance of the applicant-Municipal Corporation.
2. This Civil Application is filed seeking condonation of delay of 42 days in filing the above Appeal from Order.
3. The Appeal from Order seeks to challenge the order dated 20.07.2015 by which a Notice of Motion which was taken out on behalf of the applicant-Corporation under Order 39 Rule 11 of the

Civil Procedure Code came to be dismissed.

4. On a query being made to the learned Senior Counsel for the applicant as to what is the stage of the suit, on taking instructions the learned Senior Counsel informs that the hearing of the suit is in progress before the learned Trial Court and is at the stage of evidence and currently the witnesses on behalf of the defendant are being examined.

5. Considering the nature of the impugned order and more particularly the fact that the impugned order is dated 20.07.2015, it would be appropriate that the suit itself proceeds for adjudication. No useful purpose would be served in taking up the adjudication of the Appeal from Order and the Civil Application.

6. In the light of the above observations, the Civil Application is not required to be decided and disposed of as such. All the contentions of the parties on the merits of the matter are expressly kept open to be agitated in the pending suit.

7. In view of the orders passed in the Civil Application, nothing survives in the Appeal from Order and the same is disposed of.

8. The Civil Application which is taken out for the purpose of seeking a stay also would not survive and the same is disposed of

accordingly.

9. Needless to observe that the cause which the appellant/Municipal Corporation is pursuing is a public cause and considering the nature of the issue in the suit it would be in the interest of justice and that the learned Trial Judge would endeavour to dispose of the suit as expeditiously as possible. All the parties to the suit shall co-operate before the Trial Court in expeditious disposal of the suit.

(G. S. KULKARNI, J.)