

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.22 OF 2016
WITH
CIVIL APPLICATION NO.29 OF 2016
IN
APPEAL FROM ORDER NO.22 OF 2016**

Lakha Real Estate Private Limited

..Appellant/Org.
Plaintiff

Vs.

The Assistant Commissioner , Municipal
Corporation of Greater Mumbai

..Respondent/Org.
Defendant

....

Mr. G. S. Godbole a/w Mr. Kalpesh Joshi i/b Kalpesh Joshi
Associates for the appellant.

Mr. A. V. Diwate for the respondent.

....

CORAM : N.M. JAMDAR, J.

DATED : 22 MARCH 2016

P.C.:

. Admit. Taken up for disposal. By consent of parties, the learned counsel for the appellant has restricted the challenge in the appeal to Item-4 in the notice dated 4 December 2012, i.e. regarding elevation treatment area from 1st to 6th floor.

2. The learned counsel for the appellant has stated that as regards other items mentioned in the notice, the appellant has already removed them. If it is not so done, the same shall be

removed within 4 weeks from today. Since the challenge is now restricted to only Item No.4 as aforesaid, as regard elevation treatment is concerned, the learned counsel for the appellant submits that the appellant has sanctioned plan for this item and this fact has not been considered by the learned City Civil Court. He submitted that there is no reply filed by the respondent corporation nor this issue has been discussed when the appellant made its representation.

3. Learned counsel for the Municipal Corporation has not been able to show that this grievance of the appellant has been considered by the Municipal Authorities. Since the appellant asserts that the alleged unauthorized work is in consonance with the sanctioned plan, it is necessary for the Municipal Corporation to examine this position and then pass appropriate orders. Since this exercise is not done, it will be necessary to direct the concerned authorities to give hearing to the appellant on this aspect and then pass appropriate order as per law.

4. The learned counsel for the Municipal Corporation on instructions of Mr. Shishir Khokale, Officer SE (B & F) states that hearing on this aspect i.e. Item No.4 of the notice will be given to the appellant within a period of 6 weeks from today. The appellant will appear before Shri Vagar Javed, Designated Officer (III) P/N Ward on 4/4/2016. In view of this position, the appeal as well as the suit does not survive.

5. Parties will place a copy of this order on the file of LC Suit No.533/2013 for the Learned City Civil Court to pass appropriate order of disposal of the suit.

6. Appeal is accordingly disposed of. In view of disposal of the appeal, Civil Application does not survive and is disposed of. If any adverse order is passed, the Municipal Corporation will no doubt provide for adequate time period in the subsequent notice. The learned counsel for the Municipal Corporation states that two weeks time will be provided in the notice. Statement is accepted.

7. All contentions of the parties on merits as regard the issue, are kept open.

(N.M. JAMDAR, J.)