

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

**CIVIL APPLICATION NO. 2110 OF 2015  
AND  
CIVIL APPLICATION NO. 2111 OF 2015  
IN  
FIRST APPEAL (ST) NO. 2944 OF 2015**

Municipal Corporation of Greater Mumbai & Anr. ...Appellants  
Vs.  
Borivali Nand Dham Co-operative Housing Society Ltd. ...Respondent

**AND  
CIVIL APPLICATION (ST) NO. 8795 OF 2017  
IN  
FIRST APPEAL (ST) NO. 2944 OF 2015**

Borivali Nand Dham Co-operative Housing Society Ltd. ...Applicant

**In the matter of :**

Municipal Corporation of Greater Mumbai & Anr. ...Appellants  
Vs.  
Borivali Nand Dham Co-operative Housing Society Ltd. ...Respondent

Mrs.M.R. Bhoir for Applicants/ Appellants.  
Mr.J.G. Damani for Respondent No.1.

**CORAM : S.C. GUPTE, J.**

**25 APRIL 2017**

**P.C. :**

Civil Application No.2110/2015 is for condonation of a delay of 21 days in filing the first appeal. For the reasons stated in the civil application, the civil application is allowed by condoning the delay. Office to now number the first appeal.

2           First Appeal (Stamp) No.2944/2015 is filed by the Municipal Corporation of Greater Mumbai and another (original Defendant Nos.4 and 5). The Appellants are aggrieved by the observations made in the order insofar as the building permission granted by the Municipal Corporation in respect of upper floors of the building constructed on part of the suit property is concerned. It is the case of Respondent No.1 (original Plaintiff) that this planning permission was inappropriately granted by the Municipal Corporation. It is submitted that the FSI used for construction of the additional floors belongs to the Plaintiff society and has been incorrectly loaded onto the new building constructed on part of the suit property. Considering the nature of controversy and the record of the case, as also the impugned order in this behalf, the matter requires consideration. The first appeal is, accordingly, **admitted**.

3           Civil Application No.2111/2015 is for stay of execution of the impugned part of the order passed against the Appellants herein (original Defendant Nos.4 and 5). The impugned part of the order in the present first appeal requires the Municipal Corporation to demolish the upper floors in the building constructed on part of the suit property. Pending the hearing of the first appeal, this part of the order deserves to be stayed. Accordingly, Civil Application No.2111/2015 is allowed by staying the impugned clauses 9 and 10 of the operative part of order.

4           Civil Application (Stamp) No.8795/2017 seeks demolition of the upper floors of the new building constructed on part of the suit property. Since this part of the impugned order has been stayed in Civil Application No.2111/2015, as the very validity of the planning permission

in respect of these upper floors is the subject matter of the present first appeal, such a prayer obviously cannot be granted. However, on this application, the hearing of the first appeal is expedited. The parties will be at liberty to mention the first appeal after the ensuing summer vacation to have a suitable date fixed for hearing of the first appeal. The civil application is disposed of, accordingly. The Applicant to have the office objections removed and the civil application numbered.

5           The Appellants to have the office objections removed and the first appeal numbered. Printing of paper book is dispensed with. The Appellants to file a private paper book containing papers and proceedings of the court below within six weeks from today.

**(S.C. GUPTE, J.)**