

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

**APPEAL FROM ORDER (ST) NO.4829 OF 2017
WITH
CIVIL APPLICATION (ST) NO.4830 OF 2017
IN
APPEAL FROM ORDER (ST) NO.4829 OF 2017**

Yusuf Noor Mohamed Khan ..Appellant/Applicant
V/s.
Municipal Corporation of Gr.
Bombay & Anr. ..Respondents

Mr.Pradeep Havnur for the Appellant/Applicant.

Ms.Madhuri More for the Respondent-MCGM.

CORAM : M. S. SONAK, J.

DATE : 10 MARCH 2017.

P.C.

1. Upon production, taken on board.
2. Heard the learned counsel for the parties.
3. At the request and with the consent of the learned counsel for the parties, the appeal is disposed of at the stage of admission.
4. The challenge in this appeal is to the order dated

27-01-2017, by which, ad-interim relief has been refused to the appellant. The reasoning in the impugned order reads as follows:

“I have heard advocate Khandagale for BMC, he produced the document on record i.e. Inspection Report showing addition and alteration of alleged structure. He argued that plaintiff is challenging the notice under Section 53(1) of MRTP Act, while plaintiff is having alternate remedy in view of Section 149 of MRTP Act, suit is not maintainable. Hence pray interim relief may be refused.

While considering the arguments of both the advocates, after perusal of the plaint and documents, and considering the provision under Section 53(1) as plaintiff has remedy under Section 44 of Act, it is justiciable to frame the preliminary issue related to maintainability of suit in this Court. While considering the provisions of law and plaintiff is having alternate remedy there it is not justiciable to grant interim relief to the plaintiff. Hence I pass following order :

ORDER

- 1. Ad interim relief is hereby refused.*
- 2. Defendant/corporation shall file reply on Notice of Motion till next date.”*

5. The learned Trial Judge may proceed to determine the issue of maintainability. Such issue may be determined within a period of two months from today. However, in the meanwhile, in

terms of Section 9A(2) of the C.P.C., there shall be an ad-interim order restraining the respondent-MCGM from enforcing the impugned notice. The appellant shall also maintain status-quo in respect of the suit structure.

6. The impugned order is modified to the aforesaid extent. All contentions of all parties are left upon for consideration of the learned Trial Judge.

7. All concerned to act on the authenticated copy of this order.

8. In view of the disposal of the appeal, the Civil Application does not survive and the same is also disposed of.

(M. S. SONAK, J.)