

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

**APPEAL FROM ORDER NO. 220 OF 2017  
WITH  
CIVIL APPLICATION NO. 229 OF 2017**

Faridoon M. Gamadia & Anr.

... Appellants

Versus

Municipal Corporation of Gr. Mumbai & Anr.

... Respondents

.....

Mr. Chirag Shah a/w Mr. Rushil Mehta i/b Mr. Jitendra Shah for Appellants.

Ms. Madhuri More for Respondents.

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

**DATE : 20 APRIL 2017**

**P.C. :**

1. Heard learned counsel for the parties.
2. The appeal from order challenges an ad-interim order dated 12 April 2017 passed by the City Civil Court, Bombay. By the impugned order, the learned Judge of the City Civil Court has refused ad-interim reliefs to the Appellants ( original plaintiffs).
3. The subject matter of challenge in the present suit is a notice issued by the Defendant Corporation under Section 351 of the Mumbai Municipal Corporation Act. By an earlier ad-interim order dated 7 December 2016, the trial court directed the Plaintiff to obtain and supply certain particulars to the Assistant Engineer (B.P) City III to enable the

latter to make available to the Plaintiff the authorized plan in regard to the flat of the Plaintiff. After the plan was procured, the designated officer was directed to consider the documents, if any, produced by the Plaintiff and thereafter pass suitable orders on the impugned notice. It appears that pursuant to this order, the Plaintiff requested for requisite particulars to the Assistant Engineer (B and F) of the Municipal Corporation. There is no reply to this requisition. Subsequently, it appears, the Assistant Engineer (B and F) D Ward, who is the designated officer, referred to in the ad-interim order of 7 December, 2016, has proceeded to pass an order confirming the requisition in the impugned notice under Section 351 purportedly on the ground that there is no regularization proposal received by its office. What is sadly missed by the designated officer is that he was not to rule on the regularization proposal, if any, submitted by the Plaintiff, but whether or not the construction of the suit flat was in accordance with the approved plan. The concerned officer has not considered that and instead, appears to have considered something which was not relevant to the enquiry. When the ad-interim application was pressed before the Court on these facts, the learned Judge has refused ad-interim reliefs to the Plaintiff purportedly on the ground that the Plaintiff has not made any effort to comply with the earlier ad-interim order dated 7 December 2016 passed on his notice of motion. This purportedly on the ground that under the order of 7 December 2016, the Plaintiff was required to apply to the Assistant Engineer (B.P) City III for obtaining EB number, but that the letters in this behalf were actually addressed by the Plaintiff to the designated officer himself. That may be so but the designated officer has not directed the Plaintiff to appropriate officer or dealt with the Plaintiff's requisition.

4. Learned Counsel appearing for the Municipal Corporation states that if the Plaintiff applies to the appropriate officer, namely, Assistant Engineer (B.P) City III for EB number, the officer will make available such number to the Plaintiff. After furnishing the EB number, the Assistant Engineer (B.P) City III shall supply the approved plan of the building containing the suit flat to the Plaintiff. The Plaintiff shall make the requisite application to Assistant Engineer (B.P) City III within a period of one week from today. Upon such application, within a period of three weeks, the Assistant Engineer shall make available the EB number as well as the approved plan of the building to the Plaintiff. After this number and plan are made available to the Plaintiff, the Plaintiff will be entitled to make a representation to the designated authority, namely, Assistant Engineer, (B & F), D Ward, in support of his case that the suit flat is authorised and notice issued by the Municipal Corporation under Section 351 of the Act is devoid of any merit. Such representation shall be made within a period of two weeks of the EB number and the plan being made available to the Plaintiff. Within a period of three weeks thereafter, the designated officer shall decide whether or not the notice issued by the Municipal Corporation under Section 351 is proper. Based on this decision, further orders will be passed by the City Civil Court at Bombay.

5. Accordingly, the impugned order is set aside and all parties are directed to follow the course of action provided for in this order. In the meantime, till the City Civil Court at Bombay considers the Plaintiff's application for ad-interim/interim reliefs, after the above exercise is

carried out, there will be a *status-quo* order in respect of the suit flat.

6. The Appeal from order is disposed of in the above terms.

7. In view of the disposal of A.O., the civil application does not survive and the same is also disposed of.

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