

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 74 OF 2017
WITH
CIVIL APPLICATION NO. 425 OF 2017
WITH
CIVIL APPLICATION NO. 426 OF 2017
WITH
CIVIL APPLICATION NO. 424 OF 2017
WITH
CIVIL APPLICATION NO. 427 OF 2017
WITH
CIVIL APPLICATION NO. 428 OF 2017
WITH
CIVIL APPLICATION NO. 429 OF 2017
WITH
CIVIL APPLICATION NO. 430 OF 2017**

Kanhaiyalal Nathulal Joshi

...Appellant

Versus

Jagdish Harkishan Sharma & Anr

...Respondents

Mr OJ Menezes, i/b RS Tripathi, for the Appellant.

**Mr AV Anturkar, Senior Advocate, a/w Mr Atul Singh, for
Respondent No. 1.**

Mrs Madhuri More, for Respondent No. 2-MCGM.

Mr Shashank Thate, for the Applicant in CAA/424, 425, 426, 427,

428, 429, 430/2017.

CORAM: G.S. PATEL, J
DATED: 16th June 2017

PC:-

1. By consent, the order dated 9th November 2016 is set aside. It is clarified that this is without any assessment of the merits of the order.
2. Notice of Motion No. 3929 of 2016 is restored to file. The Motion will be heard afresh. Mr Menezes points out that there is a Deed of Confirmation dated 8th September 2010⁶ relied on by the Defendants. An incomplete copy has been annexed to the Affidavit of Evidence filed before the Trial Court by the Plaintiff. The Defendant will be at liberty to file one further Affidavit only for the purpose of placing on record the complete Deed of Confirmation dated 8th September 2006. This is, of course, without prejudice to the rival rights and contentions, all of which are specifically kept open.
3. Parties are agreed that no further Affidavits are required to be filed in the Notice of Motion.
4. It is further agreed that neither the Plaintiff nor the Defendant will create any third party rights in respect of the property in question. The Defendant has obtained an IOD and other building premises. On instructions, Mr Menezes for the

Appellant/Defendant states that until the disposal of the Motion, the Defendant will not act in furtherance of the IOD.

5. The IOD obtained by the Defendant will probably have a time limit or constraint. In view of this order, and subject to the orders in the Motion the MCGM will, if necessary, on an appropriate application, consider extending or revalidating that IOD if necessary.

6. The matter will be listed before the Principal Judge of the City Civil Court on 3rd July 2017. Having regard to the pendency on the dockets of various judges, he is requested to assign the matter to a Court that will be able to devote sufficient time to dispose of the Motion preferably by 4th September 2017.

7. All contentions of both sides are expressly kept open. The Motion will be decided on its merits uninfluenced by the impugned order dated 9th November 2016 or any orders passed in this Appeal. All orders passed the Appeal accordingly stand vacated. The parties will be governed by the statement made, recorded and accepted in this order. This order will continue for a period of three weeks after a final decision in the Motion.

8. The Appeal and the Civil Application are disposed of in these terms. There will be no order as to costs.

(G. S. PATEL, J.)