

Santosh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER (ST) NO.18891 OF 2017
WITH
CIVIL APPLICATION (ST) NO.18892 OF 2017**

Varsha H Doshi alias Varsha Nagindas Shah	...Appellant
<i>Versus</i>	
Municipal Corporation of Gr Mumbai & Ors	...Respondents

Mr RA Thorat, Senior Advocate, *i/b PJ Thorat, for the Appellant.*
Mrs. MM More, *for the Respondent No.1/MCGM.*

CORAM: G.S. PATEL, J
DATED: 11th July 2017

PC:-

1. There are two immediate problems with the order of 6th July 2017 refusing ad-interim relief. The first is a repetition of a persistent problem in the practice followed in the City Civil Court. Compilations are simply referred to in the order. These compilations are not part of the record. They are not formally marked into the record. The documents in a compilation are not placed on Affidavit. Order after order refers to such compilations and makes the task of assessment in Appeal exceedingly difficult. I have already previously requested that this practice must be discontinued. The learned Principal Judge of the City Civil Court is requested to immediately issue a practice note directing all Judges to stop accepting compilations tendered like this. Anything that needs

to be said must be said on Affidavit. If there is extreme urgency the compilation must be formally taken on record so that in Appeal it can be included in the Appeal paper-book. Let an authenticated copy of this order be sent to the Learned Principal Judge of the City Civil Court and to the Registrar of the City Civil Court.

2. The second problem is that the order under Appeal entirely fails to appreciate that *prima facie* the Mumbai Municipal Corporation Greater Mumbai's ("MCGM") case of an illegal or an unauthorised mezzanine floor is unsubstantiated. There are photographs produced by the Plaintiff, which I take on record and marked 'X1' and 'X2' respectively. This is not in fact a mezzanine floor at all. These photographs were also shown to the City Civil Court. The allegedly offending structure is nothing but a storage platform. It is merely a horizontal platform above head height. It is open on all four sides.

3. But that is not end of it. The property was initially in possession of the Government. The loft existed even then. There is an inspection extract of as long ago as 1992 which shows the existence of the loft. For what it matters, there is a mention in the inspection report of a mezzanine floor. This is also shown in the inspection extracts of 1998, 2000 and even of 9th November 1985. The 1985 inspection report also has a plan annexed to it.. These inspection reports were not referred to in the plaint apart from the 1997 inspection report, but even that 1997 report ought to have been enough.

4. There will be an ad-interim injunction in terms of prayer clause (a) of the Notice of Motion pending the final disposal of the Suit. Should the Motion be decided against the Plaintiff, the ad-interim injunction will continue for a period of four weeks thereafter.

5. The Plaintiffs will be at liberty to file a further Affidavit placing on record all reports, photographs and other documents. They will also be entitled to file a Chamber Summons for effecting a suitable amendment. The Trial Court will consider both on their own merits uninfluenced by the ad-interim order or this order.

6. The Appeal is disposed of in these terms. In view of disposal of the Appeal, the Civil Application does not survive and is disposed of accordingly. No costs.

(G. S. PATEL, J.)