

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER (ST.) No. 21711 OF 2017
WITH
CIVIL APPLICATION (ST.) No. 21713 OF 2017
IN
APPEAL FROM ORDER (ST.) No. 21711 OF 2017**

Jignesh Kishor Chudasama ... Appellant/Applicant

Vs.

Assistant Engineer (B & F)

Mumbai Municipal Corporation & Anr. ... Respondents

Mr. Santosh M. Suryawanshi, Advocate for the appellant/applicant.

Ms. Madhuri More, Advocate for respondents/BMC.

CORAM: MRS.MRIDULA BHATKAR, J.

DATE: 7th August, 2017.

P.C.:

Upon mentioning, taken on production board.

2. In this Appeal from Order, the order dated 26th July, 2017 passed by the learned City Civil Judge is under challenge.

3. The learned counsel for the appellant has submitted that the certified copy of the order dated 26th July, 2017 is not uploaded till today and hence it is not available to this Court.

4. The learned counsel for the respondents/BMC supports the order passed by the learned Judge of the City Civil Court and

submitted that now the matter is fixed before the City Civil Court on 22nd September, 2017.

5. Perused the earlier order dated 24th July, 2017. By that order, the trial Court has in fact granted ad-interim relief by giving directions that the Corporation shall not demolish the suit structure till 26th July, 2017. The roznama dated 26th July, 2017 discloses that on that day, the defendant/BMC filed an affidavit along with the documents, which were taken on record. Leave was granted to register Notice of Motion. Under such circumstances, the trial Court ought to have heard the Notice of Motion when say of both the parties is before the Court, instead has passed the order and said that the ad-interim relief is refused. The order dated 26th July, 2017 is also not available. Under such circumstances, the trial Court is hereby directed to hear the Notice of Motion. Earlier ad-interim relief dated 24th July, 2017 to continue for three weeks.

6. Appeal from Order is disposed of. Civil Application is also accordingly disposed of.

(MRIDULA BHATKAR, J.)