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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 847 OF 2016
WITH
CIVIL APPLICATION NO. 1053 OF 2016

Xillion Design Studio Pvt Ltd	...Appellant
<i>Versus</i>	
Municipal Corporation of Greater Mumbai	...Respondent

Mr Pradeep J Thorat, *for the Appellant.*
Mr F Reis, Senior Advocate, *with Mrs Madhuri More, for the*
Respondent-MCGM.

CORAM: G.S. PATEL, J
DATED: 19th June 2017

PC:-

1. The Appeal is against an order dated 3rd August 2016 dismissing the Plaintiffs' Notice of Motion. I am not inclined to interfere and in fact I see no ground made out for interference.

2. The MCGM's notice was directed specifically against a shed at the front and rear of the property and against a third floor vertical extension. It is common ground that the front and rear sheds have been removed, so that is no longer in issue. What remains is the question of the third floor extension.

3. On behalf of the MCGM, Mr Reis points out quite correctly that the plaint itself shows (page 20 of the paper-book) that according to the Plaintiff when he bought the property in question on 13th July 2005, this being a bungalow at Juhu, it was only a ground and two floor structure. In paragraph 5, the Plaintiff says that he constructed the third floor, admittedly without permission.

4. Mr Thorat says he has since filed a Chamber Summons that has been allowed in which he has introduced into the record a document of 1977, i.e., prior to the Plaintiffs' purchase of the property ostensibly showing the third floor in existence. This is clearly not only inconsistent but contradictory and mutually destructive of the stand taken in paragraphs 4 and 5 of the plaint and will undoubtedly have to be considered at the final hearing of the Notice of Motion.

5. In this Appeal, there was a protective order of 31st August 2016. This Court extended the ad-interim protection afforded by the Trial Court.

6. I am vacating that ad-interim injunction and instead only noting the statement made by Mr Reis on behalf of the MCGM on instructions that till 1st August 2017 when the Notice of Motion is on board, the MCGM will not proceed with the demolition of the third floor.

7. The Notice of Motion itself is listed on that date. It will then be for the learned Judge of the Trial Court to decide, if the Notice of

Motion is not being disposed of on that date, whether or not to extend the protection any further on the basis of the existing and additional material that is before him. That additional material is not before me. I do not think it is fair to ask that the order be reversed on material not placed before the Trial Court. At the cost of repetition, I make it clear that it is entirely within the discretion of the Trial Court on 1st August 2017 to whether or not to extend this limited protection.

8. The Trial Court will decide the Notice of Motion uninfluenced either by the interim order or the present order.

9. The Appeal from Order and the Civil Application are both disposed of in these terms with no order as to costs.

(G. S. PATEL, J)