

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

**CIVIL APPLICATION NO. 2624 OF 2017  
IN  
FIRST APPEAL NO. 665 OF 2010**

Mr.Nitin Shah

...Applicant

Versus

The Municipal Corporation of Greater Mumbai  
& Anr.

...Respondents

.....

Ms. Priti Shah for the Applicant.

Mrs. M.R.Bhoir for the Respondents/Municipal Corporation.

.....

**CORAM: MRS.MRIDULA BHATKAR, J.**

**DATE : DECEMBER 13, 2017**

**P.C.:**

1. This Civil Application is moved for reconstruction of the demolition /damaged portion of mezzanine floor and glass cabin in the presence of staff/ officer of the Respondents/Municipal Corporation at office no. 708, Prasad Chamber, Opera House, Mumbai 400 004.

2. Learned counsel for the applicant has submitted that the Municipal Corporation had issued notice under Section 351 of the Mumbai Municipal Corporation Act. The said notice was challenged by the appellant/plaintiff in Suit No. 2539 of 2004 and the Suit was dismissed by the judgment and order dated 19<sup>th</sup> March, 2010 passed by the learned Judge, City Civil Court. Against the said order, the Appeal was filed by the appellant and it was admitted by this Court on 10<sup>th</sup> August, 2010 and passed the following order:

*“Heard the learned counsel for the parties. Ad-interim relief in terms of prayers (a) and (b) had already been granted by directing the parties to maintain status quo. Pending the hearing and final disposal of the First Appeal, the respondents would be restrained from demolishing the suit structure. The applicant shall furnished security in the sum of Rs. 50,000/- within a period of two weeks for due performance of such decree as may be eventually passed. Application disposed of”.*

3. Pursuant to this order, the applicant had deposited an amount of Rs. 50,000/- on 23<sup>rd</sup> August, 2010. Thereafter, the Registrar (Judicial-II) had passed the conditional dated 29<sup>th</sup> January, 2015 thereby directing the applicant to pay Bhatta Charges within a period of four weeks, failing which Appeal shall dismissed without reference

to the Court. Thereafter, the applicant due to oversight did not pay the Bhatta Charges within stipulated time and, therefore, the Appeal was dismissed. Thereafter, the applicant has filed the application for restoration of Appeal, which was allowed on 8<sup>th</sup> August, 2017 and thus, the Appeal is restored alongwith all earlier orders passed therein.

4. Learned counsel for the applicant has submitted that the Appeal is restored by order dated 8<sup>th</sup> August, 2017 and the applicant has complied with all procedural formalities as stated in the said order. She has further submitted that prior to restoration of appeal, on 22<sup>nd</sup> June 2017, the Municipal Corporation has carried out the demolition of the suit structure. She has further submitted that the suit structure is partially demolished and, therefore, it is adversely affected the business of the applicant. The applicant has good case on merits and it is to be decided on merits. The applicant be allowed to reconstruct the same as it was earlier.

5. Per contra, learned counsel for the Municipal Corporation while opposing this application, has submitted that the suit premises was rightly demolished by the Municipal Corporation as the Appeal was

dismissed. She has further submitted that the suit premises is now not usable and no order of reconstruction be passed. She has relied on the judgment of Single Judge of this Court in the case of ***Sudhakar G. Rane v/s. Bombay Municipal Corporation dated 7<sup>th</sup> December, 1970.*** The learned Single Judge has refused to reconstruct the premises and refused to grant temporary injunction.

6. Heard submissions. Action of the Municipal Corporation cannot be faulted out, as after dismissal of the Appeal, the Suit premises was demolished. The First Appeal was admitted in the year 2010 and the ad-interim relief was granted by this Court. Now, the Appeal is restored and, therefore, the matter is to be decided finally at the time of hearing of this Appeal. Hence, the applicant is allowed to reconstruct the suit premises as it was earlier.

7. Perused the order dated 7<sup>th</sup> December, 1970 passed by the learned Single Judge of this Court. This order was passed in the Appeal against the order passed by the City Civil Court, Bombay in Notice of Motion. The Municipal Corporation has demolished the construction after refusal of Notice of Motion and thereafter, the said order was challenged before the High Court. The proposition of law

is that no illegal structure can be allowed and the Court cannot grant temporary injunction to enable a party to violate the provisions of the law. The propositions laid down in the case of **Sudhakar G. Rane** (*supra*) cannot be disputed, however, in the present case, the Appeal is already admitted and the suit structure was protected from 2010 to 2017 by the order of this Court. Under such circumstances, this application is allowed in terms of prayer clause (a) on following two conditions:-

- (i) The suit structure be reconstructed as it was earlier without any further change under the supervision and the Municipal Corporation may verify the suit structure.
- (ii) The Municipal Corporation may give the bill in respect of the expenses incurred for demolition of the suit structure and that is to be paid by the applicant immediately to the Municipal Corporation for which the Municipal Corporation shall issue the receipt of the said amount. Only after payment of the bill and getting receipt of the said amount, the reconstruction of the suit structure is allowed.

8. Civil Application is allowed and is disposed of accordingly.
9. Parties to act upon an authenticated copy of this order.

**(MRIDULA BHATKAR, J.)**