

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

**APPEAL FROM ORDER (ST.) NO. 24976 OF 2017
WITH
CIVIL APPLICATION (ST.) NO. 24977 OF 2017
IN
APPEAL FROM ORDER (ST.) NO. 24976 OF 2017**

Smt.Savitri Shivchand Shah ...Appellant

Versus

The Municipal Corporation of Greater Mumbai ...Respondent

.....

Mr. Suraj Kudalkar for the Appellant.

Mrs. Madhuri More for the Respondent- Municipal Corporation.

.....

**CORAM: MRS.MRIDULA BHATKAR, J.
DATE : SEPTEMBER 18, 2017**

P.C.:

1. Upon urgent mentioning, taken on Production Board.
2. This Appeal from Order is directed against the order dated 24.08.2017 passed by the learned Judge, City Civil Court, Gr. Bombay, thereby refusing ad-interim injunction in Draft Notice of Motion.
3. The appellant/plaintiff is challenging the notice dated 09.06.2017 issued by the respondent/Municipal Corporation under Section 354 (A)

of the Mumbai Municipal Corporation Act, 1888 (hereinafter referred to as “the said Act”). The Suit is filed for declaration that the notice issued by the respondent/Municipal Corporation is to be declared as illegal, inoperative and bad in law and for injunction that the respondent/Municipal Corporation be restrained from demolishing or removing or pulling down the suit structure. The suit structure is located near Bhatia Hospital, Shobha Sadan, Village Road, Bhandup (W).

4. Learned counsel for the appellant has submitted that the notice dated 09.06.2017 issued by the respondent/Municipal Corporation under Section 354 (A) of the said Act is infructuous, as the suit structure has already been constructed. He has further submitted that the claim of the respondent/Municipal Corporation that it is an unauthorized vertical construction is false, as the suit structure is in existence prior to 1962. He has further submitted that the learned Judge, City Civil Court, Gr.Bombay has failed to appreciate this factual position and erroneously rejected the ad-interim relief.

5. Per contra, the learned counsel for the respondent/Municipal Corporation has submitted that the ground floor structure is not a

subject matter of the notice, but unauthorized vertical construction is a subject matter of the notice. She relied on the notice dated 09.06.2017 issued by the Designated Officer/ Asst. Engineer (B & F), I, II, III, IV/Ward S of the Municipal Corporation. She supported the order passed by the learned Judge, City Civil Court, Gr. Bombay.

6. Heard submissions. Perused the impugned order and the notice dated 09.06.2017 issued by the Designated Officer of the Municipal Corporation. On query, no documents are produced to show the vertical construction was in existence prior to 1961-1962. This Appeal from Order is filed against the rejection of ad-interim injunction. Notice of Motion is pending and fixed on 27.09.2017. The respondent/Municipal Corporation to file its reply. The trial Court is directed to hear the Notice of Motion and also consider the submission of the learned counsel for the appellant on the point of maintainability of the notice issued under Section 354 (A) of the said Act, as according to him the construction of the suit structure has already been completed and hence, notice issued under Section 354 (A) of the said Act is infructuous. I direct the trial Court to decide the Notice of Motion on or before 13.10.2017.

7. Hence, Appeal from Order is disposed of.
8. In view of disposal of the Appeal from Order, nothing survives in the Civil Application and the same stands disposed of as such.

(MRIDULA BHATKAR, J.)