

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (St) NO.28291 OF 2017
WITH
CIVIL APPLCIATION (st) NO.28293 OF 2017

Deepak Sakharam Kamble Appellant
vs
The Municipal Corpn of Gr.Mumbai .. Respondent

Mr.Pradeep Thorat I.b Mr.Devendra Sharma for Appellant
Ms.Madhuri More for Respondent Corporation

CORAM : MRS.MRIDULA BHATKAR, J
DATE: 9 OCTOBER 2017

P.C.

1. This Appeal from Order is directed against an order dated 3.10.2017 passed by the learned Ad-Hoc Judge, City Civil Court, Mumbai in Draft Notice of Motion of 2017 in L.C.Suit No.2673 of 2017. The Corporation has given notice dated 2.2.2017 under section 351 of the MMC Act and thereafter passed an order on 26.9.2017 that the structure is unauthorised against which the Suit is filed by the Plaintiff claiming that the structure is old. It is a ground plus one structure.

2. However, ad interim injunction was refused by the

learned Judge of the City Civil Court on the ground that there is no permission in respect of construction of the first floor and also the photographs which are produced before the trial Court disclosed that the notice is relating to front floor but, at the front portion there is a door and it is mentioned that the back side portion of the first floor looks old.

3. Learned counsel for the Corporation has submitted that permission for repairs was sought in respect of the ground plus mezzanine floor and taking advantage of the same it was constructed.

4. The learned Judge has referred to city survey plan i.e. sheet No.105 wherein the structure is shown as ground plus one. Learned counsel for the Appellant submits that this is an old sheet and the city survey plan is of the year 1956 and therefore no permission was required at the relevant time.

5. In view of these submissions and on a perusal of the

order, I am of the view that as the matter is fixed for hearing of Notice of motion on 27.11.2017, the Corporation is directed to file Affidavit-in-Reply in the said motion and the trial Court may dispose of the Notice of motion on or before 12.12.2017.

6. Till then, Corporation is directed not to demolish the suit structure till 12.12.2017.

Appeal from order along with Civil Application stands disposed of.

(MRIDULA BHATKAR, J)

Rng

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