

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER (ST.) No. 35141 OF 2017  
WITH  
CIVIL APPLICATION (ST.) No. 35331 OF 2017**

Sandeep Dolatchand Kothari & Anr. ... Appellants/Applicants  
Vs.

Municipal Corporation of Greater Mumbai ... Respondent

Mr. Prashant Surve, Advocate for the appellants/applicants.  
Mrs. M.R. Bhoir, Advocate for the respondent/Corporation.

**CORAM: MRS.MRIDULA BHATKAR, J.**  
**DATE: 20<sup>th</sup> December, 2017.**

**P.C.:**

Admit. By consent, the Appeal is heard finally and disposed of  
at the stage of admission.

2. This Appeal from Order is directed against the order dated 6<sup>th</sup>  
December, 2017 thereby refusing ad-interim relief passed by the  
learned Judge of the City Civil Court, Borivali Division, Dindoshi,  
Mumbai in Draft Notice of Motion in L.C. Suit No. 2931 of 2017.

3. The learned counsel for the appellants submitted that in the  
notice dated 4<sup>th</sup> July, 2017, which is under challenge, the Corporation  
has given an option to the appellants to apply under section 44 of  
M.R.T.P. Act for retention of the work before the Competent Authority,

i.e., Executive Engineer (Building Proposal) City of M.C.G.M. within one month from the receipt of the notice. The learned counsel submitted that the appellants did not apply within one month, however, now they intend to make an application under section 44 of M.R.T.P. Act. and the Corporation may decide this Application. Hence, the learned counsel prays that the structure be protected.

4. The learned counsel for the Corporation while opposing this Application submitted that the structure, as per the notice, is not a shed but it is the structure in the stilt area and it is illegal.

5. In view of the submissions of the learned counsel and on perusal of the notice, it is found that the Corporation has given the option of applying under section 44 of M.R.T.P. Act. The notice is of 4<sup>th</sup> July 2017 and therefore, one opportunity can be given to the appellants for applying under section 44 of M.R.T.P. Act. Hence, I pass following order:

- (i) The appellants may apply to the Corporation under section 44 of the M.R.T.P. Act, as submitted, on or before 15<sup>th</sup> January, 2018;
- (ii) The Competent Authority of the Corporation to decide the

said application on or before 28<sup>th</sup> February, 2018 and the said decision is to be communicated to the appellants;

- (iii) Notice of Motion is fixed before the trial Court on 16<sup>th</sup> April, 2018, till then, the Corporation not to take coercive action.

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

**(MRIDULA BHATKAR, J.)**