

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

**CIVIL APPLICATION ST.NO.137 OF 2018
IN
FIRST APPEAL st. NO.136 OF 2018**

Shri Raju Prabhudas Dhodi ... Applicant/Appellant

Vs.

Municipal Corporation of Greater Mumbai ... Respondent

Mr.D.R. Singh i/b Shailesh Kumar Pai for the applicant/Appellant
Mr.Pradeep Thorat with M.R. Bhoir for Respondent

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: JANUARY 31, 2018**

P.C. :

1. The appeal challenges the judgment and order dated 14.12.2017 passed by the learned Judge of the City Civil Court, Dindoshi, Mumbai, thereby challenging the notice under section 314 of the Mumbai Municipal Corporation Act issued on 31.8.2012 and the order passed by the Assistant Municipal Commissioner, R(Central) Ward, on 13.12.2016.
2. It pertains to a structure standing in the midst of the D.P. road. The learned Counsel for the applicant/appellant submits that the impugned judgment and order be stayed and the protection

granted earlier during the trial be continued. The learned Counsel submits that pending suit, there was a protection and that was continued till today. He submits that if at all the interim stay is not continued, then, substantial loss will be caused to the appellant.

3. Mr.Thorat, appearing for the Corporation, submits that inside the compound edging roadline, there is a chawl and the applicant is having a room inside. The suit structure is a separate and unauthorised structure which the appellant has constructed on the road itself. The learned Counsel has filed photographs showing the placement of the suit structure.

4. After hearing the parties and after going through the relevant portion of the judgment and considering the placement of the structure from the photographs, it is amply clear that the structure is constructed in the midst of the road and appears to be unauthorised, without any permission of the Corporation. The prayer made by the learned Counsel for the appellant would have been considered as it is a matter of possession of a structure. However, I am not inclined to extend the stay as the structure is in the midst of the D.P. road. In fact, I am surprised as to how the Corporation has allowed and tolerated this structure in the midst of

the road due to which the entire vehicular traffic gets blocked everyday. If the structure is removed, the appellant will not lose his roof and shelter as he has place in one of the rooms in the adjacent chawl. Therefore, I am of the considered view that no stay can be granted to the structure and the structure is to be demolished immediately in view of the facts of the case. In the circumstances, the interim stay granted by the trial Court and continued by this Court on 10.1.2018 is hereby vacated.

5. List the appeal on 14.2.2018 for final hearing. If the appellant succeeds in the appeal, then, the order of providing alternate premises to the appellant can be made.

6. Civil Application is dismissed accordingly. Registry to accept the documents, to be filed by both the parties with proper pagination.

(MRIDULA BHATKAR, J.)