

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER ST. NO. 413 OF 2018
WITH
CIVIL APPLICATION ST. NO. 414 OF 2018
IN
APPEAL FROM ORDER ST. NO. 413 OF 2018**

Revati Ramesh Chaukekar

...Appellant

Versus

The Designated Officer-IV,
Assistant Engineer (Bldg. & Fac.)
Municipal Corporation of Greater Mumbai & Anr.. ...Respondents

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Mr.Gauraj Shah i/b. Mr. Virendra T. Dubey for the Appellant.
Mrs. M.R.Bhoir for the Respondents/ Municipal Corporation.

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CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE : **FEBRUARY 07, 2018**

P.C.:

1. This Appeal from Order is directed against the order dated 19.12.2017 passed by the learned Civil Judge, City Civil Court, Borivali Div., Dindoshi, Mumbai thereby refusing the ad-interim relief in Notice of Motion No. 3960 of 2017 in L.C.Suit No. 3265 of 2017.
2. This pertains to one chawl. It is ground plus one upper floor, which is referred as the suit premises. The respondents/ Municipal

Corporation has issued notice dated 19.06.2017 under section 354A of the Mumbai Municipal Corporation Act and the Designated Officer of the Municipal Corporation has passed the order on 21.11.2017 in respect of the suit premises.

3. After considering the submissions of both the parties, the learned Judge of the trial Court has refused to grant ad-interim relief. Being aggrieved by the said order, the appellant/plaintiff has filed this Appeal.

4. The learned Counsel for the appellant while relying on the CTS plan, has submitted that the CTS plan shows the structure is one plus one. The Municipal Corporation has not explained why that CTS plan not to be accepted as a proof that the structure is authorized and legal. He has further submitted that in the affidavit of Mr.Rajiv B.Gurao, Asstt. Engineer, B & F., (D.O.IV), K/West Ward, which is filed by the Municipal Corporation on 5th February, 2018 before this Court, there is no explanation in respect of why the CTS plan is not to be accepted. He has further submitted that the structure is old and it is ground plus one floor.

5. The learned Counsel for the Municipal Corporation has submitted that entire structure is unauthorized. She has further submitted that the learned Judge of the trial Court has passed an elaborate speaking order and he has mentioned that the suit structure was demolished by the Municipal Corporation on 21.06.2017, 30.06.2017, 14.08.2017, 19.08.2017, 14.10.2017 and lastly on 15.12.2017. However, the plaintiff/ appellant has suppressed this fact.

6. The photographs of construction and demolition of the suit structure are produced. In the affidavit, Mr. Gurao has stated that the appellant is one Revati Ramesh Chaukekar. However, the application was made by one Mohd. Rahiz Khan and CTS plan was issued to him by survey no. 1585. He has further stated that CTS plan does not give the authorization of the notice structure and does not show the existence of the notice structure i.e. ground plus two structure prior to the datum line of 1964. The appellant/plaintiff has not produced any proof/document to show that the structure, which is claimed to be unauthorized in the notice, is in existence prior to datum line. The Designed Officer of the Municipal Corporation has passed reasoned order. I am of the view that no interference is

required in the order passed by the learned Judge of the trial Court.

Hence, Appeal from Order is dismissed.

7. In view of dismissal of Appeal from Order, Civil Application does not survive and the same is accordingly disposed of.

8. The trial Court may endeavour to dispose of the Notice of Motion finally till 15th March, 2018 Both the parties to cooperate the trial Court.

9. It is noted that if the suit structure is demolished and it is further constructed by the appellant, then it will be contempt of the Court. Registry to accept the documents, if filed by the appellant.

(MRIDULA BHATKAR, J.)