

vks

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

**APPEAL FROM ORDER (ST) NO.1158 OF 2018
WITH
CIVIL APPLICATION (ST) NO.1162 OF 2018
IN
APPEAL FROM ORDER (ST) NO.1158 OF 2018**

Patrakar Sadan Co-operative Housing Soc. Ltd.	...	Appellant.
V/s. Municipal Corporation of Greater Mumbai and anr	...	Respondents

Mr. Rajendra R. Mishra, for the appellant.
Mrs. Madhuri More, for respondent corporation.
Mr. G. B. Walawalkar i/by S.P.Thorat, for respondent
No.3.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 3rd SEPTEMBER, 2018.

P.C. :

1] This Appeal takes an exception to the order dated 11.10.2017, passed by the City Civil Court, Mumbai, whereby ad-interim relief is refused to the appellant in Draft Notice of Motion filed in L.C.Suit No.2745 of 2017.

2] According to learned counsel for the appellant, the procedure as prescribed by this Court in Writ Petition (L) No.1135 of 2014, has not at all been followed by respondent before issuing notice

under Section 354 of the Mumbai Municipal Corporation Act, calling upon for demolition of the suit structure on the ground that it has become dangerous and dilapidated. Despite that the trial Court has refused ad-interim relief, restraining respondent from taking any action in pursuance of the Notice issued under Section 354 of the Mumbai Municipal Corporation Act.

3] Learned counsel for respondent submits that the respondent Corporation has issued such notice just two days before that is on 1st September, 2018, requesting the appellant society for submitting detailed structural audit report along with all necessary scientific tests, from empanelled registered structural auditor, with respondent corporation.

4] In view thereof, needless to state that the appellant will produce the structural Audit Report before the Designated Officer-III, Assistant Engineer (Building and Factory), R /Central Ward, of respondent corporation.

5] As the Notice of Motion is pending before the trial Court, it would be appropriate to relegate the parties to the trial Court itself for deciding the Notice of Motion as expeditiously as possible, without this Court entering into the merits of the impugned order especially considering the subsequent development.

6] Accordingly the Appeal from Order is disposed off.

7] Considering that already respondent corporation has called upon the appellant to produce structural audit report, it follows that appellant will file structural audit report within six weeks. The competent authority to decide the same within four weeks thereafter, as per directions given by this Court in the Writ Petition (L) No.1135 of 2014.

8] The Municipal Corporation will not take any coercive action till appropriate decision is taken by the competent authority. The undertaking which is filed by the appellant in this Court shall continue till appropriate decision is taken by the competent authority.

9] In view of dismissal of Appeal from order, Civil Application therein becomes infructuous and the same is accordingly disposed off.

[DR.SHALINI PHANSALKAR-JOSHI, J.]