

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER NO. 186 OF 2015
WITH
CIVIL APPLICATION NO. 238 OF 2015
IN
APPEAL FROM ORDER NO. 186 OF 2015**

Shri.Popatlal Damji Chheda

...Appellant

Versus

Municipal Corporation of Greater Mumbai & Anr.

...Respondents

.....

Mr.Altaf Khan for the Appellant.

Mrs.Madhuri More for the Respondent/ Municipal Corporation.

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**CORAM: MRS.MRIDULA BHATKAR, J.
DATE : JANUARY 12, 2018**

P.C.:

1. This Appeal from Order is directed against the order dated 15th January, 2015 passed by the learned Judge, City Civil Court, Greater Mumbai in Draft Notice of Motion in L.C.Suit No. 97 of 2015 thereby rejecting the ad-interim relief.

2. The respondent/Municipal Corporation has given notice under Section 351 of the Mumbai Municipal Corporation Act for removal of

unauthorized construction of the first floor i.e. mezzanine floor on the existing ground floor. The said notice was challenged by the appellant/plaintiff.

3. The learned Counsel for the appellant has submitted that the suit structure is in the slum area. He has further submitted that it was census slum and hence datum line of 1st January, 2000 was applicable and not of 1st April, 1962 and, therefore, the Municipal Corporation has no authority to issue notice under Section 351 of the Mumbai Municipal Corporation Act. He has further submitted that the mezzanine floor was constructed since long and is in existence prior to 1962. He has further submitted that he has applied for photo pass.

4. The learned Counsel for the Municipal Corporation while opposing this Appeal, has submitted that the appellant/plaintiff could not produce any document to show that the structure, which is claimed to be unauthorized in the notice, is in existence prior to 1962. The learned counsel has further submitted that the order passed by the learned Judge of the trial Court is correct and legal and is to be maintained.

5. Heard submissions. Perused the impugned order. The appellant has not produced any evidence to show that the suit structure is in existence prior to 1962. The copy of the photo pass is also not produced. The Cadastral map of C.T.S.No.11/49 is produced. It does not show existence of the ground floor plus one structure. Notice is given only in respect of the first floor and not for the ground floor structure. No interference is required in the order passed by the trial Court. Hence, I maintain the order dated 15th January, 2015 passed by the learned Judge of the trial Court. Notice of Motion is pending since 2015. The trial Court to hear and to decide the Notice of Motion within a period of one month. Parties to co-operate with the trial Court.

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

(MRIDULA BHATKAR, J.)