

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER (ST.) NO. 2311 OF 2018
WITH
CIVIL APPLICATION (ST.) NO.2313 OF 2018
IN
APPEAL FROM ORDER (ST.) NO. 2311 OF 2018**

Mr.Javed Hashmi ...Appellant

Versus

Municipal Corporation of Gr.Mumbai ...Respondent

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Mr.Dinesh C.Shah for the Appellant.
Mrs. M.R.Bhoir for the Respondent/Municipal Corporation.

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**CORAM: MRS.MRIDULA BHATKAR, J.
DATE : JANUARY 24, 2018**

P.C.:

1. Upon urgent mentioning, taken on Production Board.
2. This Appeal from Order is directed against the order dated 4th April, 2018 passed by the learned Civil Judge, City Civil Court, Borivali Div., Dindoshi, Mumbai thereby refusing the ad-interim relief in Notice of Motion No. 3453 of 2017 in L.C.Suit No. 2709 of 2017.

3. The respondent/ Municipal Corporation has given the notice under Section 351 of the Mumbai Municipal Corporation Act in respect of unauthorized construction of the first floor and second floor. The Designated Officer/ Asstt. Engineer (B & F)-I, II, III.IV/Ward/H/West has also passed the order on 22nd September, 2017 in respect of unauthorized structure. The first floor is with BMC wall with ladi coba and second floor is temporary plywood partition, shed with AC sheet roof with total height of structure 24 feet.

4. The appellant/original plaintiff has filed the suit thereby challenging the notice dated 6th April, 2017 given by the Municipal Corporation and also the order of the Designated Officer. The Municipal Corporation appeared in the matter and opposed the prayers of the ad-interim reliefs made by the appellant/original plaintiff. Hence, this Appeal.

5. The learned Counsel for the appellant has submitted that the trial Court has failed to appreciate that the structure is in existence prior to datum line. The learned Judge of the trial Court ought to

have appreciated the documents and should have taken into account that it was only mezzanine floor.

6. The learned Counsel for the Municipal Corporation has pointed out that the Deed of Transfer, which was executed between the appellant and one Suresh Singh on 23rd December, 1987 by which he came in possession of the suit structure. She has submitted that there is no mention of the first floor and second floor in the said Deed of Transfer.

7. Perused the impugned order. The learned Judge of the trial Court has passed elaborated and reasoned order thereby referring to all the relevant documents filed by the appellant/original plaintiff. It appears that in the documents filed by the appellant/original plaintiff, there are two documents viz. facility agreement dated 21st May, 2002 and leave and licence agreement dated 6th June, 2005 executed by the plaintiff discloses that he has let out the first floor of the suit structure to other persons.

8. Perused the photographs of the suit structure. It *prima-facie appears* that there is a vertical unauthorized construction on the ground floor.

9. The learned Counsel for the Municipal Corporation has submitted that there is no issue in respect of the ground floor, but the notice is given in respect of the first floor and second floor.

10. I am of the view that the order passed by the learned Judge of the trial Court rejecting the ad-interim relief is legal and cannot be faulted with. Hence, Appeal from Order is dismissed.

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

12. The Municipal Corporation to file affidavit in reply in Notice of Motion on or before 12th February, 2018. Parties to appear before the

trial Court on 12th February, 2018. The learned Judge of the trial Court to decide the Notice of Motion on or before 28th February, 2018.

(MRIDULA BHATKAR, J.)