

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

**APPEAL FROM ORDER NO. 170 OF 2018
WITH
CAA/230/2018 IN AO/170/2018**

Dr. Jagdish Natwarlal Shah ..Appellant

v/s.

The Municipal Corporation of Gr. Mumbai ..Respondents

Mr. Pravin Samdhani, Sr. Counsel a/w. Hemant Mehta i/b. Mehta &
Co. for the Appellant

Ms. Madhuri More for the Respondent-MCGM.

Mr.R.B.Gurav, Asst. Engineer, (Bldg. & Factory) K ward present.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 12 APRIL, 2018.**

P.C.

1. The Appellant herein, who was the plaintiff in L.C. Suit No. 3544/2015 has challenged the Order dated 26th February, 2018 whereby the learned Judge of City Civil Court, Dindoshi, Borivali, had dismissed the Notice of Motion No. 50 of 2016 seeking to restrain the respondent Corporation from taking any action in pursuance of the Order dated 8th December, 2015 in respect of the

suit premises, viz. Flat No.2 situated on the ground floor of Park View Apartment, Baptista Road, Vile Parle (W), Mumbai 56

2. By the impugned order dated 8th December, 2015, the respondent Corporation had directed the appellant herein to stop unauthorized use of the suit premises as clinic. The said order was preceded by Show Cause Notice dated 25th February, 2015 under Section 351(1) of the MMC Act, 1988. The said notice was replied vide reply dated 4th March, 2015, wherein the appellant had stated that in terms of Rule 51(iv) of the Development Control Regulations for Gr. Mumbai, 1991, the residential premises could be used by medical and dental practitioners as dispensary or clinics, provided that only out patient facilities in a area not exceeding 30 sq. meters.

3. The impugned order indicates that the appellant herein is using the premises as clinic without sanction of the Commissioner. A perusal of the regulation indicates that such sanction is required only in cases which are covered under Rule 51(iii) of the Regulation. Rule 51(iv) does not require such permission or sanction of the Commissioner.

4. Ms. More, the learned Counsel for the Corporation contends

that the dispute was regarding the area used by the appellant as a clinic. Ms. More, the learned Counsel for the Corporation has submitted that the said area exceeds 30 sq. meters. She has placed on record a letter addressed by the Assistant Engineer, giving no objection for use of portion of premises as a clinic provided the appellant restricts the clinic area to 30 sq. meter as per Rule 51(iv) of the D.C. Rules. The said letter is taken on record and marked "X" for identification.

5. At this stage, the learned Counsel for the appellant has filed an undertaking of the appellant stating that the area of the premises used as clinic would be less than 30 sq. meters carpet area and the said clinic would be used on for the out patient treatment. The appellant has also given undertaking that the other part of the suit flat will not be used for any purpose, other than residential purpose. The appellant has also produced a sketch of the suit flat wherein he has delineated the area which will be used only for the purpose of clinic. Statements made and the undertaking given are accepted.

6. The appeal stands disposed of in the light of the said statement and the undertaking given by the appellant.

7. It is made clear that the order dated 8th December, 2015 shall stand stayed as long as the appellant abides by the undertaking and that the Corporation will be free to take action in accordance with law, in the event the appellant violates the said undertaking.

8. In view of disposal of the Appeal from Order, Civil Application does not survive and the same is disposed of.

(ANUJA PRABHUDESSAI, J.)