

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.34 OF 2018
WITH
CIVIL APPLICATION NO.42 OF 2018

The Municipal Corporation of Gr. Mumbai
-vs-
Madhuben Madhurbhai Thakkar

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri N. V. Walawalkar, Senior Advocate with Smt
Madhuri More, Advocate of MMC.
Shri Bipin J. Joshi, Advocate for respondent.

CORAM : A.S.CHANDURKAR, J.
DATE : December 03, 2018

1. Heard finally with consent of learned counsel for the parties.
2. The original defendant is aggrieved by the order dated 26/09/2016 whereby the trial Court has allowed the notice of motion moved by the original plaintiff with the prayer that the defendant be restrained from demolishing the suit structure.
3. According to the plaintiff the structure in question was not located on the D. P. Road and hence plaintiff was entitled to protect the said structure. On the other hand according to the defendants the said structure was causing obstruction on the said D. P. Road and hence was required to be removed.
4. After hearing the learned counsel for the parties it is seen that the trial Court granted interim relief on

26/09/2016. That order was not stayed by this Court in the present proceedings. In the meanwhile the evidence in the suit has commenced and the plaintiff has to be now cross-examined.

5. In the light of aforesaid aspects, interests of justice would be served if the proceedings in L.C.Suit No.2046/2016 are expedited and the trial Court is directed to decide the same expeditiously. It would obviate the necessity of recording of any finding as to the correctness of the interim order. Accordingly the present appeal is disposed of in following terms.

- (i) The trial Court shall decide the L.C. Suit No.2046 of 2016 by the end of April 2019.
- (ii) The parties shall cooperate with the trial Court for that adjudication.
- (iii) It is clarified that observations made by the trial Court in the impugned order would not come in the way of the defendant when the suit is decided. The trial Court shall consider the evidence and decide the suit on its own merits without being influenced by observations made in the impugned order.
- (iv) The respective contentions of parties are kept open.
- (v) The Appeal From Order and pending Civil Application stand disposed of.

(A.S.CHANDURKAR, J.)