

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

**APPEAL FROM ORDER NO.427 OF 2018**  
**ALONG WITH**  
**CIVIL APPLICATION NO.565 OF 2018**

Jigna Amit Kotecha ..... Appellant-Applicant  
V/s.  
Municipal Corporation of Greater Mumbai .... Respondent

Mr. Pradeep J. Thorat for the Appellant-Applicant.

Mrs. Madhuri More for the Respondent-Municipal Corporation.

**CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.**

**DATE : 27<sup>TH</sup> SEPTEMBER, 2018.**

**P.C. :**

1. Heard Mr. Thorat, learned counsel for the Appellant, and Mrs. More, learned counsel for the Respondent-Municipal Corporation.

2. This Appeal takes an exception to the order dated 1<sup>st</sup> March 2018 passed by the City Civil Court, Mumbai, thereby dismissing the Notice of Motion No.49 of 2012 filed in L.C. Suit No.2543 of 2011.

3. The said Notice of Motion was taken out by the Appellant herein, seeking the relief of temporary injunction, to restrain the Respondent-Municipal Corporation from taking any action in pursuance of the notice dated 18<sup>th</sup> November 2011, issued under Section 55 of the Maharashtra Regional and Town Planning Act, 1966. The notice gives the description of the suit structure, which reads as under :-

*“Unauthorized enclosure of 'open space' at Society Office with sliding window, plywood sheets, adm. Size 16'0" x 10'0" and using it for commercial office purpose at 1<sup>st</sup> Floor of the building known as 'Maharan', situate at Plot No.16, Gulmohar Cr. Road No.12, J.V.P.D., Juhu, Mumbai - 49, as shown in the sketch by red colour hatching and which is beyond the approved plan sanctioned by M.C.G.M. vide file No.CE/8471/WS/AK dtd. 29.12.06.”*

4. The grievance of the Appellant is that, he has purchased the office premises, admeasuring 530 sq.ft., constructed carpet area in the building known as 'Maharan Co-operative Housing Society', by virtue of the registered Sale Deed dated 22<sup>nd</sup> December 2009, and he is in lawful possession thereof. The construction, which is alleged in the impugned notice, is not at all of the temporary structure, but it is a permanent structure and in view thereof, the notice issued by the Respondent-Municipal Corporation, under Section 55 of the MRTP Act, is itself not legal and correct.

5. However, as pointed out by learned counsel for the Respondent-Municipal Corporation, the notice is issued not in respect of the constructed premises, but in respect of the temporary structure, which is the unauthorized enclosure of the 'open space', which is admeasuring 16 sq.ft. x 10 sq.ft. and the same is being used for the commercial purpose at the first floor of the building. The Trial Court has in this respect considered the 'Sanctioned Plan', which was produced on record,

showing that there was 'open space' towards East side of the office and the Appellant has covered that 'open space'. Even the photographs, which were produced by the Appellant, as observed by the Trial Court, show that, the 'open space' is covered by the sliding windows and not by wall. The photographs being self-speaking, one need not enter into the aspect whether it is a temporary structure or a permanent structure as such. If the 'open space' is enclosed by sliding windows and plywood sheets, then it follows that, it is a temporary structure and the use thereof is being made for the office purposes.

6. In view thereof, the Trial Court was perfectly justified in refusing the relief of interim injunction and thereby dismissing the Notice of Motion. The Appeal, therefore, holds no merits; hence, stands dismissed.

7. At this stage, learned counsel for the Appellant seeks continuation of the order of status-quo, which is running in this case. Learned counsel for the Respondent-Municipal Corporation strongly resists the said request and in my considered opinion also, when not only the Trial Court has rejected the Notice of Motion, but this Court has also rejected the Appeal against it, no case is made out for continuation of the said interim arrangement, which was made when the Appeal was filed. This prayer, therefore, stands rejected.

8. In view of the above, Civil Application No.565 of 2018 pending in the Appeal does not survive and the same stands disposed off as infructuous.

**[DR. SHALINI PHANSALKAR-JOSHI, J.]**