

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

**APPEAL FROM ORDER (L) NO.14953 OF 2018
WITH
CIVIL APPLICATION (ST) NO.14954 OF 2018
IN
APPEAL FROM ORDER (L) NO.14953 OF 2018**

Mr. Mohammed Yakoob Shaikh	...	Appellant
V/s.		
The Municipal Corporation of Gr. Mumbai	...	Respondent

Mr. N.B. Shukla i/by Mr. B.P. Shukla for the Appellant.
Ms. Oorja Dhond for BMC / Respondent No.1.

CORAM : V.L.ACHLIYA, J.
(VACATION COURT)

DATED : MAY 18, 2018.

P.C. :

1. Appellant has preferred this Appeal from Order challenging the interim order dated 11th May, 2018 passed by the vacation court in L.C.Suit (Stamp) No. 6831 of 2018. By the impugned order the ad-interim relief is refused. The notice of motion taken out by the Appellant is kept for hearing on 16th July

2018 before the regular Court. It is the contention of the Appellant that the suit structure including third floor which is alleged to be unauthorized construction is in existence prior to 1962 and protected structure by virtue of Detum line policy. It is contended that the Municipal Corporation has initiated an action at the behest of the complainant who is co-owner of the property.

2. Learned counsel appearing for the Respondent-MCGM submits that though earlier notice under Section 351 of MMC Act was issued in respect of the entire building the action was restricted in respect of the third floor of the building.

3. Since the order passed is an interim order and notice of motion is pending before the Trial Court, I am of the view the Appeal from Order can be conveniently disposed of by directing the Trial Court to decide the notice of motion on merit by preponing the date fixed before the Trial Court. Accordingly the parties are directed to appear before the Trial Court on 6th June

2018. Trial Court is directed to hear the parties and decide the notice of motion as expeditiously as possible preferably within four weeks from date of their appearance. In the meantime, defendant-Municipal Corporation is directed to defer its action of demolition against suit structure till passing of order by trial Court.

4. Appeal from Order is disposed of in above terms.

5. In view of the disposal of the Appeal from Order, the civil application stands disposed of in terms of order in Appeal from Order.

(V.L.ACHLIYA, J.)