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

**APPEAL FROM ORDER (ST) NO.15192 OF 2018
WITH
CIVIL APPLICATION (ST) NO.15193 OF 2018
IN
APPEAL FROM ORDER (ST) NO.15192 OF 2018.**

Rajesh Kusale ... Appellant

V/s.

The Municipal Corporation
of Greater Mumbai and anr ... Respondents

Mr. Yuvraj D. Patil, for appellant.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 11th JUNE, 2018.

P.C. :

- 1] Heard learned counsel for the appellant.
- 2] The appeal is against the order dated 3.5.2018, passed by the City Civil Court, Mumbai, in Long Cause Suit (ST) No.7245 of 2018, thereby rejecting ad-interim relief.
- 3] The reason given for rejection of the same was the categorical statement made on behalf of respondent defendant that

the structure was already demolished and photographs were also filed on record to that effect. In this backdrop, it was held by the trial Court that it was incumbent upon the appellant to produce the photographs to show that the structure is still in existence. The appellant has not done that. In such situation, in considered opinion of this Court, the trial Court has rightly refused ad-interim relief, keeping the matter for hearing on Notice of Motion on 14.06.2018.

4] The only submission advanced by learned counsel for appellant is that the structure was already demolished as per photograph on 4.4.2018; whereas notice is issued on 26.4.2018, but there is nothing to that effect in the notice. In my considered opinion, this contention could be taken by the appellant before the trial Court, in the hearing on Notice of Motion. Secondly, the notice goes to show that new construction was undertaken and photographs to that effect were also filed by the respondent which were taken on 27.5.2018. Therefore, no fault can be found with the order of the trial Court. The trial Court has, after considering the photographs, rejected ad-interim relief as the appellant has not shown that the construction was in existence and it was authorized construction.

5] Hence, no interference is warranted in the Appeal. The appellant is at liberty to argue his Notice of Motion before the trial Court, as the matter is kept on 14.06.2018.

6] Hence appeal stands dismissed.

7] In view of dismissal of Appeal, Civil Application (ST)
No.15193 of 2018 stands disposed off accordingly.

[DR.SHALINI PHANSALKAR-JOSHI, J.]