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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (St.) No. 18021 OF 2018

Mrs. Bina Dilip Timble	...	Appellant
Vs.		
The Municipal Corporation of Greater Mumbai	...	Respondent

Mr. Y. K. Tiwari I/b K. P. Tiwari & Co., for the Appellant.
Mrs. Mamta Bhoir, for the Respondent MCGM.

CORAM : V. M. DESHPANDE, J.

DATE : JULY 9, 2018

PC :-

1. Heard the learned counsel for the Appellant and the learned counsel for the Respondent Corporation. Order dated 4.5.2018 passed in pending notice of motion by the court below, refusing to grant ad-interim relief is the subject matter of this appeal.

2. Admittedly, notice under S. 351 is not issued to the present Appellant, who is owner of the structure. From the impugned order, it is clear that it was given to one Sitaram Sen,

since according to the Corporation, he is in occupation of the suit premises. There may be force in the contention of the learned counsel for the Respondent that the notice is already issued. However, at the same time, notice is not given to the owner. Further, though the ad-interim relief is refused, the trial Court has granted relief in favour of the Appellant by directing the Corporation not to demolish the suit structure, which is mezzanine floor for a period of six weeks.

3. Since the notice of motion is still pending, in my view, till the said motion is decided, the ad-interim relief granted by the learned trial court can be extended. However, at the same time, the Appellant or any person claiming through him shall not make any repairs, alteration, modification to the suit structure. Hence, I pass following order:

- (i) Appeal is disposed of with a direction to the court below to decide the notice of motion pending in L. C. Suit No. 738 of 2018 within a period of 8 weeks from the date of receipt of this order;

- (ii) Till the said notice of motion is decided on merits within the stipulated period, as aforesaid by the trial court, the Respondent Corporation or any person claiming through it shall not demolish the suit structure;
- (iii) Till the said notice of motion is decided by the trial court, the Appellant or any person claiming through him shall not make any repairs, alteration, modification to the suit structure;
- (iv) Needless to state that all civil applications filed in this appeal shall stand disposed of.

Sd/-
[V. M. DESHPANDE, J.]

Vinayak Halemath