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

**APPEAL FROM ORDER NO.430 OF 2018
WITH
CIVIL APPLICATION NO.570 OF 2018
IN
APPEAL FROM ORDER NO.430 OF 2018.**

Ketan Kanhaiyalal Shah ... Appellant.

V/s.

Municipal Corporation of
Greater Mumbai and ors ... Respondents

Mr. Dharendra D. Singh, for the appellant.
Mrs. Madhuri More, for respondent corporation.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 20th AUGUST, 2018.

P.C. :

- 1] Heard learned counsel for the appellant and respondents.
- 2] By this Appeal from Order, the appellant takes an exception to the order dated 27.6.2018, passed by City Civil Court, Mumbai, thereby restoring the Notice of Motion No.353 of 2009 filed in Suit No.875 of 2009. However, rejected the prayer to restore the earlier order of interim injunction.

3] The grievance of the learned counsel for the appellant is that if the Notice of Motion is restored to its file, then it follows that the earlier order of ad-interim relief should also have been restored or continued further. However, it has not been done so and therefore, interference is warranted in the impugned order.

4] However, as rightly pointed out by learned counsel for the respondent that the impugned order passed by the trial Court shows that the Notice of Motion was filed in the year 2009. Since then order of ad-interim relief was continued without proceeding with the hearing of the Notice of Motion. As a result, for six dates it was kept for passing order of dismissal for failure to continue with the hearing of the Notice of Motion. In such situation, when the Notice of Motion was dismissed for default, there is absolutely no justification for continuing the order of ad-interim relief which is stated to be vacated as a result of dismissal of the Notice of Motion. Mere restoration of Notice of Motion cannot be sufficient to restore the order of ad-interim injunction. Considering the conduct of the appellant, the relief of ad-interim injunction being an equitable relief, such relief cannot be continued or restored.

5] Hence the appeal holds no merit, therefore, stands dismissed.

6] In view of dismissal of Appeal itself, Civil Application No.570 of 2018 no more survives and the same is disposed off accordingly.

7] At this stage, learned counsel for the appellant seeks extension of the order of ad-interim relief granted by this Court on 2nd July, 2018. Learned counsel for respondent takes objection thereto. Considering the order passed as above, no case is made out for extension of the interim relief. Hence stands rejected.

[DR.SHALINI PHANSALKAR-JOSHI, J.]