

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

**APPEAL FROM ORDER STAMP NO. 18480 OF 2018
WITH
CIVIL APPLICATION STAMP NO. 18482 OF 2018**

Naseem Ahmed Siddique ... Appellant
Versus
Municipal Corporation of Greater Mumbai ... Respondent

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Mr. Y. S. Jahagirdar, Senior Advocate a/w Mr. Suresh M. Sabrad, Amey C. Sawant, Advocates for the Appellant.

Mr. Dipen Merchant, Senior Advocate a/w Mrs. Madhuri More, Advocate for the Respondent-BMC.

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CORAM : A. S. CHANDURKAR, J.

DATE : 18th DECEMBER, 2018.

P. C.:

1. Heard finally with consent of the parties.
2. The challenge in this appeal is to an ad-interim order passed by the trial Court thereby refusing to grant any *ad-interim* protection in favour of the plaintiff who was seeking injunction in the challenge to the notice under Section 351 of the Mumbai Municipal Corporation Act, 1888. That order has been passed on 28th June, 2018. The record indicates that this Court on 29th June, 2018 continued the interim protection that was granted by the Division Bench of this Court in Writ Petition (L) No. 354 of 2018 until the parties were heard.

3. The subject motion is pending before the trial Court. The respondents have filed their affidavits opposing grant of any relief therein. Considering the nature of challenge and the replies as filed, the interests of justice would be served if the trial Court is directed to decide the said Notice of Motion expeditiously on its own merits. Hence, keeping rights and contentions of the parties open the following order is passed:

ORDER

- (i) The trial Court shall permit the defendants to file additional affidavit opposing the Notice of Motion. The plaintiff would be at liberty to file rejoinder.
- (ii) The said Notice of Motion be decided on its own merits expeditiously and preferably by the end of April 2019. The *ad-interim* protection granted on 29th June, 2018 shall continue to operate during pendency of the Notice of Motion, but without prejudice to the contentions of the defendants.
- (iii) It is clarified that grant of *ad-interim* protection or its continuation shall not in any manner weigh with the trial Court, which shall decide the Motion on its own merits.
- (iv) The Appeal from Order as well as civil application stand disposed of in aforesaid terms.

(A. S. CHANDURKAR, J.)