

vks

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

**APPEAL FROM ORDER NO.24836 OF 2018
WITH
CIVIL APPLICATION (ST) NO.24839 OF 2018**

Pradeep Mangaldas Rajgor ... Appellant.

V/s.

Municipal Corporation of Greater
Mumbai ... Respondent

Mr. Abhijit Singh i/by Anil R. Mishra, for the
appellant.

Mr. Madhuri More, for respondent corporation.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 14th SEPTEMBER, 2018.

P.C. :

1] Heard learned counsel for the appellant and respondent.

2] This Appeal takes an exception to the order dated 21st
August, 2018, passed by the City Civil Court, Mumbai thereby
rejecting the ad -interim relief of injunction in the Draft Notice of
Motion in L.C. Suit No.2423 of 2018.

3] The said Notice of Motion was taken out by the appellant
herein for interim relief restraining respondent Municipal

Corporation from taking any action in pursuance of the notice dated 21st June, 2018, and the order dated 13th August, 2018 passed under Section 351 of the Mumbai Municipal Corporation Act.

4] The case of the appellant is that he is in possession of the suit premises and running the wine shop therein since last several years together. He is having the certificate issued under Shops and Establishment Act, so also, he is having other requisite licenses and “no objection certificate” issued by respondent corporation in the year 2013 for running wine shop in the suit premises. Hence according to him, there is no question of his making illegal or unauthorized construction and therefore, the the Notice and the Order passed under Section 351 of Mumbai Municipal Corporation Act are null and void.

5] This Notice of Motion came to be resisted by the respondent, contending inter alia that the appellant has failed to produce even a single document to prove that the structure was in existence since prior to the datum date of 1.4.1962 and thereafter at any point of time permission for construction was obtained. It was submitted that after following due process of law and after considering the documents produced by the appellant, the order

under Section 351 of the Mumbai Municipal Corporation was passed. Hence, the trial Court has rightly refused the relief of ad-interim injunction.

6] At the time of hearing of this Appeal, when a specific query was made with learned counsel for appellant as to whether the appellant is having any documentary proof showing that the suit structure was in existence since prior to datum line 1.4.1962, learned counsel for appellant and appellant, who is present in person before the Court, is unable to point out any such document.

7] The entire reliance of the appellant is on the documents like the certificate issued under Shop and Establishment Act, no objection certificate given by the respondent to run such shop etc. However, these documents cannot show that the construction of the suit shop was carried out after obtaining due permission from respondent or getting the plans sanctioned from respondent. In the absence thereof, such construction is required to be treated as illegal and unauthorized. The Designated Officer of respondent, who has passed order under Section 351 of the Mumbai Municipal Corporation Act, has considered all the documents produced by the appellant and rightly found that there was not a single document proving the

legality and validity of the suit construction.

8] In view thereof, the trial Court has rightly refused to grant the ad-interim relief to protect such illegal construction. In Appeal from Order, no interference is warranted and therefore, Appeal stands dismissed.

9] In view of dismissal of the Appeal itself, Civil Application therein becomes infructuous and the same is disposed off accordingly.

[DR.SHALINI PHANSALKAR-JOSHI, J.]