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

**APPEAL FROM ORDER NO.26622 OF 2018
WITH
CIVIL APPLICATION (ST) NO.26623 OF 2018**

Ravikant Ronakchandra Agarwal ... Appellant
V/s.
The Municipal Corporation of
Greater Mumbai ... Respondent

Mr. Mohit P. Jadhav, for the the appellant.
Mrs. Madhuri More, for the Respondent corporation.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 14th SEPTEMBER, 2018.

P.C. :

- 1] Not on board.
- 2] Upon mentioning, taken on today's board.
- 3] Heard learned counsel for the appellant and respondent.
- 4] This appeal is directed against the order dated 11.9.2018, passed by the City Civil Court, Mumbai, thereby rejecting the ad-interim relief in terms of Draft Notice of Motion filed in L.C.Suit (ST) No.12383 of 2018.
- 5] The said Notice of Motion was taken out by the the appellant, challenging the Notice dated 06.12.2017, issued by Respondent Municipal Corporation, under Section 351 of the Mumbai

Municipal Corporation Act, and the order passed by the Designated Officer under said Section on 01.09.2018.

6] The grievance of the appellant is that the structure is in existence since last several years. Earlier also respondent has issued notice to the appellant on 17.4.2015 and thereafter no action was taken in pursuance of the said Notice, thereby indicating that respondent has accepted the contention of the appellant that the construction of the suit structure is legal and authorized. It is submitted that despite various documents produced by the appellant, proving the legality of the suit structure, the order of demolition was passed under Section 351 of the Mumbai Municipal Corporation Act and therefore, the said order being not legal and valid, the respondent needs to be restrained from taking any action in pursuance of the said order.

7] However, as rightly observed by the trial Court and submitted by learned counsel for the respondent, the appellant has not produced a single document to prove that his structure was in existence since prior to datum line dated 1.4.1962 or he has constructed the same after obtaining requisite permission and getting the plans sanctioned from the Municipal Corporation. All the documents produced by him only show his occupation in the suit structure, but not the legality and authorisation of the suit structure.

The Designated Officer of Municipal Corporation has, by taking into consideration all the documents passed the reasoned order, finding that the legality and validity of the suit structure is not established. In view thereof, the trial Court was justified in rejecting the ad-interim relief.

8] As regards the earlier notice dated 22.2.2016, it can be seen that the said Notice was issued to one M/s Ambica Stationery Xerox, whereas the present notice dated 06.12.2017 is issued to Occupier Shri. Ravikant Ronakchand Agarwal. In such circumstances, the connection between the two notices is also not established. Moreover, merely because action was not taken in pursuance of earlier notice, does not mean that now respondent is precluded from taking action. What was important for the appellant was to prove the legality and validity of the structure, which the appellant has failed to prove. Hence, trial Court has rightly refused the ad-interim relief. Therefore, no interference is warranted in the order passed by the trial Court. The Appeal, being without merits, stands dismissed.

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

[DR.SHALINI PHANSALKAR-JOSHI, J.]