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

**APPEAL FROM ORDER (ST) NO.26675 OF 2018
WITH
CIVIL APPLICATION (STO NO.26677 OF 2018.**

Mohd.Fasieh HajiMohd. Quddus Khan ... Appellant.

V/s.

Municipal Corporation of Greater
Mumbai and anr ... Respondents

Mr. Anand Pande, for the appellant
Mrs. Madhuri More, for respondent

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 1st OCTOBER, 2018.

P.C. :

- 1] Heard learned counsel for the appellant and respondents.
- 2] This appeal is directed against the order dated 5.9.2018, passed by the City Civil Court, thereby dismissing the Notice of Motion No.2729 of 2018, filed in L.C. Suit No.1569 of 2015.
- 3] The said Notice of Motion was taken by the present appellant, for restraining respondent corporation from taking any action, much less demolition of the suit premises, in pursuance of Notice dated 14.02.2015, issued under Section 354A of the Mumbai

Municipal Corporation Act; and the orders dated 13.5.20115 and 23.6.2.2015.

4] As per the contention of the appellant, the suit premises is ground + two floors and shop No.1 in the plot, known as “Weaver's Society Building”, and the appellant is running Bakery business therein. He has not made any changes in the suit premises. Even the report of the inspection conducted by the Municipal Corporation in the year 2014 shows that the premises existing was of ground + two floors. In such situation, it is submitted that the notice issued under Section 354A of the MMC Act, is not legal and valid.

5] However, learned counsel for respondent points out to the various documents produced on record before the trial Court, which show that on the basis of information received that, the appellant was carrying out some construction in the suit premises, the officers of the Corporation visited the site, panchnama was carried out and at that time, as stated in the notice under Section 354A of the MMC Act , construction was found to be undertaken. The photographs of the said construction are also produced on record. No permission for such construction was either produced before the Designated Officer or before the trial Court.

6] On perusal of the order passed by the trial Court, hence no fault can be found in the impugned order passed by the trial Court,

dismissing the Notice of Motion. The appeal, therefore, being without merit stands dismissed.

7] At this stage, learned counsel for appellant submits that trial Court has granted stay to its order and that is operating till today and the same may be extended.

8] Learned counsel for respondent strongly resists the said request.

9] In my considered opinion, from the facts stated above, no protection can be granted to the illegal and unauthorized structure. Hence this request is rejected.

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

[DR.SHALINI PHANSALKAR-JOSHI, J.]