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

**APPEAL FROM ORDER NO.8 OF 2018
WITH
CIVIL APPLICATION NO.13 OF 2018
IN
APPEAL FROM ORDER NO.8 OF 2018.**

James Cyryl Lobo	...	Appellant
V/s.		
The Municipal Corporation of Greater Mumbai	...	Respondent

Mr. R. A. Thorat, Senior Counsel a/w Mr. Suryajeet P.Chavan a/w Mr. Induprakash Tripathi, Mr. Pramod Gautam and Ms. Bhagyashri Gawas, i/by C.K. Tripathi, for the appellant.
Smt. Neeta Madhyan a/w Mrs. Madhuri More, for respondent Corporation.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 3rd SEPTEMBER, 2018.

P.C. :

- 1] Heard learned counsel for the appellant and respondent.
- 2] This Appeal from Order takes an exception to the order dated 6th October, 2017, passed by the City Civil Court, Dindoshi, thereby dismissing Notice of Motion No.2505 of 2017 filed in L.C.Suit No.2156 of 2017.
- 3] The said Notice of Motion was taken out by the appellant

herein for restraining respondent Municipal Corporation from taking any action in pursuance of the Notice dated 15.7.2017, issued under Section 354A of the Mumbai Municipal Corporation Act, and for restraining respondent from demolishing the suit premises in respect of which the notice was given. The trial Court has dismissed the said Notice of Motion and hence the instant appeal.

4] As per the case of respondent, on the date of notice dated 15.7.2017, the appellant was found carrying on construction of ground + 2, structure having RCC frame work of columns, beams and slab. The structure was having asymmatric plan (approximate 15.15 m x 16 m height 7.3). As appellant failed to produce the permission for the said construction, respondent corporation, by the stop work notice, directed the appellant to stop the execution of the said work forthwith. At the time of inspection on 14.7.2017, photographs were taken which clearly go to show that the construction was in progress. They depict that only the column, beams, slabs were in place and further construction of ground plus first floor was in progress. However, the photographs produced on record dated 4.8.2017, and 12.8.2018, show that the construction of ground plus two floors was going on and it was in full swing. Some of the photographs dated 22.8.2018 also disclose that the construction was going on. Moreover, in front of the building, the construction of compound wall along with

other gate was going on.

5] In this situation, in considered opinion of this Court, the trial Court has rightly observed that when the notice under Section 354A of MMC Act, was issued, the construction of the suit structure was in progress. Admittedly, the appellant has not produced on record any document worth the name, to show that he has applied for permission to carry out such construction and he has received it. Therefore, it follows that the said construction is apparently totally illegal, unauthorized and such structure cannot be protected, even if it is completed.

6] The submission of learned counsel for appellant is that the appellant has filed before the trial Court the Chamber Summons for producing certain documents like permission dated 5.4.1976, showing that he has applied for repairs and plastering of existing beams, of existing structure of ground plus second floor. It is urged that instead of deciding the said Chamber Summons and considering those documents, the trial Court has rejected the Notice of Motion.

7] However, in my considered opinion, even if those documents are not taken into consideration, they show that such permission for repairs was obtained in the year 1976. However, photographs produced on record by respondent show that the present construction is undertaken in July, 2017. The photographs

are self speaking to show that the construction is not in the nature of repairs, but totally a new construction. In the light of the same, it can hardly be said that the trial Court has committed any error in dismissing the Notice of Motion.

8] Learned counsel for appellant, at this stage, requests that this construction be protected till the appellant applies for regularization of the said construction.

9] Learned counsel for respondent, however, points out that the appellant has completed the entire construction, even after the notice of stop work was issued.

10] In view thereof, in my considered opinion, when the stop work notice issued by Municipal Corporation, is blatantly disobeyed and after lapse of about more than one year, such, request is made for further protection of the construction when the construction is illegal and unauthorised, this request also cannot be considered.

11] Hence the Appeal from Order stands dismissed.

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

[DR.SHALINI PHANSALKAR-JOSHI, J.]