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

**APPEAL FROM ORDER NO.792 OF 2017
WITH
CIVIL APPLICATION NO.1065 OF 2017
IN
APPEAL FROM ORDER NO.792 OF 2017.**

Anthony Rosario D'Souza ... Appellant

V/s.

Municipal Corporation of
Greater Bombay and ors ... Respondent

Mr. J. M. D'silva for the Appellant.
Mrs. Madhuri More, for respondent Corporation.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 25th SEPTEMBER, 2018.

P.C. :

1] Heard learned counsel for the appellant and respondents.

2] This Appeal takes an exception to the order dated 13th October, 2017, passed by the City Civil Court, Mumbai, thereby dismissing the Notice of Motion No.3408 of 2017 in L.C. Suit No.2183 of 2017.

3] The said Notice of Motion was taken out by the appellant herein seeking relief of interim injunction, restraining respondent

Municipal Corporation from taking any action in pursuance of the Notice dated 15.7.2017 issued under Section 351 of the Mumbai Municipal Corporation Act, 1888, and the order dated 09.09.2017, passed by the Designated Officer.

4] The contention of the appellant is that he is in possession of the suit premises as tenant. He has taken over the said premises from erstwhile landlord from 22.8.1999. At that time landlord handed over the inspection extract dated 12.8.1999 in which the construction of the suit property is mentioned as situated on the ground floor -Extension C-I, Shed with brick walls coba flooring and A.C. roofing. Thus, it is submitted that as he is in possession of the said structure since the year 1999, it cannot be said that the said structure is illegal or unauthorized. However, only at the instance of subsequent landlord, this action is initiated by the respondent and hence respondent be restrained from pursuing with the said action.

5] However, as rightly held by the trial Court, all the documents on the basis of which the appellant is claiming that the structure is in existence since the time he took on rent, were considered not only by the Designated Officer while passing the order under Section 351 of the MMC Act, but also by the trial Court. The

copies of the rent receipts on which the appellant has placed reliance are of the year 1999 and 2001. Admittedly, even assuming that the said structure is existing as mentioned in the copy of Inspection extract of the year 1999, it does not prove the existence of said structure prior to the datum line of 01.04.1962. Moreover, there is no sanctioned plan or permission to show that this structure was found reflected in the plan which was approved by the Municipal Corporation. Admittedly, the Notice is issued only in respect of unauthorized extension and not in respect of main building. The notice premises is a shed which has no wall of its own; it rests on the compound wall of the three properties with one side wall. Therefore, it goes without saying that the structure, which is having no walls of its own, cannot be considered or will be considered as authorized by the Municipal Corporation. Whatever it may be, at this stage, not a single document is produced to show that the construction of the extension in the form of this structure is authorized or legal.

6] In view thereof, the trial Court has rightly held that no protection can be granted to the existence of such illegal and unauthorized construction. In the order passed by the trial Court, no interference is warranted at the hands of this Court. Appeal, hence being without merits, stands dismissed.

7] At this stage, learned counsel for the appellant seeks extension of the stay, which is granted by this Court. However, for the reasons stated above, there is no reason to extend the order of stay which was only of temporary nature till the appeal was heard. Hence this request stands rejected.

8] In view of dismissal of Appeal, pending Civil Application therein no more survives, and the same is disposed off accordingly.

[DR.SHALINI PHANSALKAR-JOSHI, J.]