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

**APPEAL FROM ORDER NO.698 OF 2018.  
WITH  
CIVIL APPLICATION NO.915 OF 2018**

|                                                    |     |             |
|----------------------------------------------------|-----|-------------|
| Ramesh Nimjibhai Kapadia                           | ... | Appellant   |
| V/s.                                               |     |             |
| Municipal Corporation of<br>Greater Bombay and anr | ... | Respondents |

Mr. Pradeep J. Thorat, for the appellant.

Mrs. Madhuri More, for respondent  
corporation.

Mr. Anil Sakhare, Senior Advocate with Mr.  
Akshay Patil and Mr. Mohan G. Salián i/by  
N.G.S. Legal for respondent No.3.

Shri. Kolekar, Assistant Engineer B/F H  
Ward, present.

**CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.**

**DATE : 29<sup>th</sup> OCTOBER, 2018.**

**P.C. :**

1] Heard learned counsel for the appellants and learned  
counsel for the respondents.

2] This Appeal from Order takes an exception to the order  
date 20<sup>th</sup> October, 2018, passed by the City Civil Court, Mumbai,

thereby refusing ad-interim relief in the Notice of Motion No.3023 of 2018 in S.C. Suit No.2311 of 2018.

3] The said suit and Notice of Motion was filed by the present appellant, seeking relief of interim injunction, restraining respondent Municipal Corporation from demolishing or pulling down the suit premises which is a bungalow known as, “Janu Kunj”, consisting of ground plus first floor with a load bearing structure, pursuant to the notice issued under Section 354 of the Mumbai Municipal Corporation Act dated 15.9.2014.

4] As the trial Court, after considering the submissions advanced by learned counsel for the both the parties and having regard to the earlier directions in respect of the same premises and the same notice, rejected the relief of ad-interim injunction, hence being aggrieved thereby, the appellant has approached to this Court.

5] The submission of learned counsel for Appellant is that after the appellant has carried out substantial structural repairs, he has submitted a fresh report of the Structural Auditor, in view of the requisition made by the Municipal Corporation and the said Structural Auditor, has in his report classified the building as “C-2” that is requiring major repairs, but without eviction or demolition. It is urged that in view of this Structural Auditor Report, it was

incumbent on the Municipal Corporation to refer the matter to TAC, in the light of guidelines issued by this Court in the case of **Municipal Corporation of Greater Mumbai -vs- State of Maharashtra and ors [W.P.No.1135 of 2014 dated 23<sup>rd</sup> June, 2014]** and which guidelines were confirmed by the Division Bench of this Court in the case of **Municipal Corporation of Greater Mumbai -vs- State of Maharashtra and ors [W.P. No.1080 of 2015 dated 28<sup>th</sup> February, 2018]** and accordingly the Corporation has also issued circular, according to which, in case of private building, when there are conflicting reports submitted by the owner or occupier of the building and by the Structural Engineer of the Municipal Corporation, the matter is required to be referred to the TAC.

6] Here in the case, it is submitted that without referring the matter to the TAC, as the Municipal Corporation is bent upon in taking action of demolition of the suit building, it was necessary on the part of the trial Court to grant ad-interim relief of injunction. As the trial Court has not done so and was swayed by only with the observations made by the Division bench of this Court, in the case of **Ramesh N. Kapadia -vs- Mumbai Municipal Corporation and ors [W. P. No.3027 of 2014 dated 27.2.2018]**, the impugned order passed by the trial Court, is not legal and correct and therefore,

required to be quashed and set aside.

7] However, as rightly submitted by the learned counsel for respondent Corporation and learned counsel for respondent No.3, the Writ Petition No.3027 of 2014, which was preferred by the appellant challenging this very notice dated 15.9.2014, issued under Section 354 of the Mumbai Municipal Corporation Act, was not only dismissed by the Division bench of this Court, by its order dated 27.2.2018, but it was dismissed with costs, because the appellant has, during the pendency of the Writ Petition taking undue advantage of the order of status quo, has carried out, in breach of the said order, major structural repairs and therefore, the Division bench of this Court has categorically observed in paragraph Nos. 4 and 5 of the order that:-

“without obtaining permission of the Municipal Corporation or even seeking permission of this Court, the act of the appellant of carrying out extensive repairs to the subject building amounts to overreaching the authority of the Court”.

It was specifically observed that

“the appellant should not have carried out such extensive repairs of the building, without seeking the permission from the Municipal Corporation or from this Court. Not only this, the appellant has also during the

hearing of the said Writ Petition, which took place for not less than 8 days, did not even inform the Court that either he has commenced extensive repairs or that he has carried out extensive repairs”.

8] In paragraph No.7 of the order, the Division Bench of this Court, was therefore, constrained to observe that the

“Appellant should not have taken the law into his own hands and carried out extensive repairs, when this Court was seized of the issue as to whether the condition of the building is such that it requires immediate demolition or whether it can be repaired”.

9] Hence, considering conduct of the petitioner, the Division Bench of this Court not only dismissed the writ petition, but it was done by imposing the costs of Rs. 1 lac to be paid by the appellant to the Municipal Corporation.

10] The appellant has challenged the said order before the Hon'ble Supreme Court by filing S.L.P. (Civil) No.8553 of 2018, which came to be dismissed on 27<sup>th</sup> February, 2018. Thus, the said order has become final. As in the said order also, the appellant was very much challenging the same Notice dated dated 15.9.2014, which is challenged in this Notice of Motion, the said order will operate as

*resjudicata*.

11] According to learned counsel for appellant, however, if the Court has dismissed the Writ Petition, keeping open remedy of substantive suit, then the observations made by this Court in the Writ Petition would not amount to *res-judicata*. To substantiate his submission, learned counsel for the appellant has relied upon the judgment of the Apex Court, in the case of **Pujari Bai -vs- Madan Gopal [(1989 3 SCC 433)]**. However, in the present case, this Judgment cannot be of any help, as the Division bench of this Court has rejected the equitable relief to the appellant under Article 226 of the Constitution of India, on account of the conduct of the appellant which was amounting to overreaching the authority of the Court. Not only that, the appellant was also imposed costs for his act of taking the law in his hand and carrying out extensive repairs without bringing it to the notice of Municipal Corporation or this Court.

12] Now needless to state that, when the appellant is in this Notice of Motion also seeking the same equitable relief of interim injunction, the conduct of appellant cannot be ignored, which is already deprecated by the Division of this Court. The relief of ad-interim injunction more or less is the same, as is granted under Article 226 of the Constitution of India. Both reliefs are equitable and

discretionary. Therefore, if the appellant is held not entitled for such equitable relief, under Article 226 of the Constitution of India, he cannot be entitled for the same equitable relief in the suit and in the Notice of Motion, under Order 39 Rule (1) of Code of Civil Procedure. This is the very ground on which the trial Court has refused to grant the order of ad-interim relief. Therefore, in the discretion exercised by the trial Court, no fault can be found. No grounds are made out for this Court to interfere with the said discretion. The Appeal, therefore, being without merits stands dismissed.

13] At this stage, learned counsel for the appellant submits that appellant will vacate the suit premises within 8 days and hand over peaceful and vacant possession thereof to respondent corporation. Learned counsel for appellant submits that he may be given period of 8 days to vacate suit premises.

14] Learned counsel for respondent No.3 submits that it should be subject to filing of the undertaking by the appellant to that effect within two days.

15] Accordingly, the appellant is granted time upto 5<sup>th</sup> November, 2018 to vacate peacefully the possession of the suit premises and inform the respondent corporation about the same by 5.00 p.m. on 5<sup>th</sup> November, 2018.

16]           Thus, subject to filing of the undertaking by the appellant in this Court, within two days that he and his family members will vacate the possession of the suit premises, and remove their belongings therefrom by 5.00 p.m. on 5.11.1018, respondent corporation shall not take any action till 5.00 p.m. on 5.11.2018.

**[DR.SHALINI PHANSALKAR-JOSHI, J.]**