

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (STAMP) NO.33248 OF 2017
ALONG WITH
CIVIL APPLICATION (STAMP) NO.33250 OF 2017

Varsha Deepak Vazirani and Anr. V/s. The Municipal Corporation of Greater Mumbai and Anr.	 Appellants-Applicants Respondents
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Mr. Pradeep J. Thorat for the Appellants-Applicants.

Mrs. Madhuri More for the Respondent-MCGM.

Mr. Kiran Jain, a/w. Mr. Ish Jain and Mr. Rajan Yadav, I/by M/s. Kiran Jain and Company, for the Intervenor.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 17TH OCTOBER, 2018.

P.C. :

1. Heard learned counsel for the Appellants-Applicants and Respondents.

2. This Appeal is preferred against the order dated 22nd November 2017, whereby the City Civil Court, Dindoshi, Borivali Division, Mumbai, has refused ad-interim temporary injunction in the Draft Notice of Motion filed in L.C. Suit No.3057 of 2017.

3. The said Notice of Motion was taken out by the Appellants herein seeking the relief of interim injunction, restraining the Respondent-Municipal Corporation from taking any action in pursuance of the notice dated 7th September 2017, issued under Section 351 of the Mumbai Municipal Corporation Act, 1881, and order dated 28th October 2017 passed by the Designated Officer of the Respondent-Municipal Corporation.

4. The notice pertains to the unauthorized construction of the door, admeasuring 1.2 M width in stair-case between first and second floor of the building. According to the Respondent-Municipal Corporation, the door was constructed without permission and thus, it is blocking entry to the terrace.

5. The contention of the Appellants is that, this door is in existence since the year 1995 and they have not made any new construction of the door. Moreover, it also cannot be called as an addition to the building, as contemplated under Section 351 of the MMC Act, or, which is referred to in Section 342 of the said Act and the definition of the term "Building", as given in Section 3(f) of the Act. It is submitted that, the Respondent-Municipal Corporation has also not filed any reply to the said Notice of Motion and the landlord of the said building, at whose instance, the Respondent-Municipal Corporation has taken action, was also not party

to the Suit. His Chamber Summons for impleadment is yet pending before the Trial Court. The Notice of Motion is also kept for hearing on 24th October 2018.

6. In this backdrop, the reliance is placed on the Judgment of the learned Single Judge of this Court in the case of *Rafiq Hameed Sayyed Vs. Municipal Corporation of Greater Mumbai, 2006 (1) Bom.C.R. 50*, to submit that, at an ad-interim stage, in the absence of the affidavit filed on behalf of the Respondent as well as production of necessary documents on record, the learned Trial Judge ought not to have concluded that there is no material on record to show that the structure existed prior to the datum line.

7. In this case, it is submitted that, the structure, i.e. the door, existed since 1995 and, hence, the said structure needs to be protected; especially when this Court has, during the pendency of this Appeal, granted ad-interim relief, which is in existence till date, and now the Notice of Motion is also fixed before the Trial Court for hearing.

8. In view thereof, without expressing any opinion on merits of the case, it would be proper to direct the Trial Court to decide the Notice of Motion, after considering the Chamber Summons filed by the landlord for his impleadment. Ordered accordingly.

9. The Appeal is disposed off, with the above-said direction.

10. The ad-interim relief granted by this Court vide order dated 30th November 2017, *thereby extending the ad-interim injunction granted by the Trial Court on 22nd November 2017, which is continued from time to time till today*, is extended till the decision of the Notice of Motion.

11. In view of the above, Civil Application (Stamp) No.33250 of 2017 pending in the Appeal does not survive and the same stands disposed off as infructuous.

[DR. SHALINI PHANSALKAR-JOSHI, J.]