

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

**APPEAL FROM ORDER NO. 46 OF 2016
WITH
CIVIL APPLICATION NO. 60 OF 2016
IN
APPEAL FROM ORDER NO. 46 OF 2016**

Mr. Bruno Nicholas Misquitta .. Appellant

Vs.

The Municipal Corporation of
Greater Bombay

.. Respondent

Mr. Deepak Chitnis, Advocate I/b M/s. Deepak Chitnis-Chiparikar & Co. for
appellant.

Mrs. Madhuri M. More, Advocate for respondent-BMC

CORAM : A.S. CHANDURKAR, J.

DATE : 26TH NOVEMBER 2018

P.C.

1 The appellant is the original plaintiff who is aggrieved by the action sought to be taken by the respondent-Municipal Corporation by issuing an order dated 25th November 2015 intending to demolish the structure occupied by the appellant.

2 It is the case of the appellant that the suit property is in possession of the appellant since the year 1965 and any action sought to be taken by the respondent should be preceded by offering alternate accommodation to the appellant. Along with plaint, the plaintiff has filed various documents and on the strength of the same, it has been prayed that the respondent be

restrained from taking any further action on the basis of the communication dated 26th November 2015.

3 By the impugned order, the trial Court has refused to grant ad-interim relief in favour of the appellant. After hearing, the learned counsel for parties, it is seen that the Notice of motion preferred by the appellant in the year 2015 is still pending adjudication. This Court, on 17th December 2015, had granted ad-interim protection in favour of the appellant which protection continues to operate.

4 It is found that in the light of the fact that the Notice of Motion is pending for adjudication before the trial Court, interests of justice would be served by expediting the adjudication of the Notice of Motion. Accordingly the following order is passed :-

O R D E R

(i) The trial Court is directed to decide the subject notice of motion in L.C. Suit No.3290 of 2015 preferred by the appellant expeditiously and by the end of March 2019.

(ii) The ad-interim protection granted on 17th December 2015 shall continue to operate till adjudication of that Notice of Motion.

It is, however, clarified that continuation of the interim orders shall not influence the trial Court which shall decide the Notice of Motion on its own merits.

(iii) The respective contentions of parties are kept open.

(iv) The Appeal from Order is disposed of on aforesaid terms. All pending Civil Applications accordingly stand disposed of.

(A.S. CHANDURKAR, J.)