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

**APPEAL FROM ORDER (ST) NO.35024 OF 2017
WITH
CIVIL APPLICATION (ST) NO.35027 OF 2017
IN
APPEAL FROM ORDER (ST) NO.35024 OF 2017
WITH
CIVIL APPLICATION (ST) NO.768 OF 2018
IN
APPEAL FROM ORDER (ST) NO.35024 OF 2017**

Adam Suleman Mistry	...	Appellant.
V/s.		
The Designated Officer Ward		
E, Municipal Corporation		
of Greater Mumbai	...	Respondent

**ALONGWITH
CONTEMPT PETITION (ST) NO.12408 OF 2018
IN
APPEAL FROM ORDER (ST) NO.35024 OF 2017**

V/s.		
The Designated Officer Ward		
E, Municipal Corporation		
of Greater Mumbai	...	Petitioner
-vs-		
Adam Suleman Mistry	...	Respondent

Mr. Sandeep S. Sharma, for appellant in AOST
No.35024 of 2017 and for respondent in Contempt
Petition.

Mr. Narendra V. Walavalkar, Senior Advocate, a/w
Mrs. Madhuri More, for the respondent corporation.
Mr. Rajendra Desai i/by Jayesh R. Vyas, for
intervener.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 12th SEPTEMBER, 2018.

P.C. :

1] Heard learned counsel for the appellant, respondent and the intervener.

2] This Appeal takes an exception to the order dated 4th December, 2017, passed by the City Civil Court, Mumbai, thereby dismissing the Notice of Motion No.3676 of 2017, filed in L.C.Suit No.2404 of 2017.

3] The said Notice of Motion was taken out by the appellant herein, seeking the relief of interim injunction, restraining respondent Municipal Corporation from taking any action, in pursuance of the Notice dated 26.09.2017, issued under Section 354A of the Mumbai Municipal Corporation Act.

4] According to appellant, he is in possession of the shop premises, which are situate on the ground floor of the Masjid Trust Building at Nagpada, Mumbai. It is his contention that the work, which is undertaken by him, is only in the nature of tenantable repairs, for which no permission of the Municipal Corporation is required. However, as the Corporation has issued the impugned notice alleging that he has undertaken a totally new construction, and it is liable to be demolished, he is constrained to file the suit and to take

out the Notice of Motion.

5] This Notice of Motion came to be strongly resisted by respondent corporation, contending inter alia that the construction undertaken by the appellant is not in the nature of tenantable repairs, but it is totally a new construction and that too, when the earlier construction undertaken by him, which was also illegal and unauthorized, was demolished by Municipal Corporation on 23.10.2017, after passing a detailed and speaking order on 13.10.2017. It was submitted that appellant has not come before the Court with clean hands. He has suppressed the material fact and is trying to get the relief of injunction, to reconstruct the demolished portion and erect the new construction.

6] The respondent corporation also filed the documents to prove that the construction was already demolished on 23.10.2017.

7] The appellant filed his affidavit in rejoinder, but without denying specifically the fact that the construction undertaken earlier was demolished on 23.10.2017.

8] In these facts of the case, the trial Court was pleased to appoint the Court Commissioner to inspect the site to find out whether appellant has undertaken any new construction. The Commissioner visited the spot on 14.11.2017 and found that the building is only of ground plus upper floor and the second floor

construction was covered with tarpaulin. The photographs taken by him of the ongoing construction of the first floor shop and the second floor were produced on record.

9] On perusal of these photographs and the Court Commissioner's report, the trial Court was pleased to hold that as the construction undertaken by the appellant is totally a new construction, for which no permission of the Corporation was obtained, nor plan was got sanctioned, the notice issued by the respondent corporation under Section 354A of the Mumbai Municipal Corporation Act, is perfectly legal and hence was pleased to reject the Notice of Motion.

10] While challenging this order of the trial Court, the learned counsel for appellant has reiterated the same submission that the construction undertaken by the appellant is only of tenatable repairs, for which no permission of the Municipal Corporation is required.

11] However, in my considered opinion, even a cursory glance to the photographs which are produced on record, by both the parties and the report of the Court Commissioner, is more than sufficient to hold that the construction on the site is not at all in the nature of tenantable repairs, but it is a construction of multi storied building and totally a new construction in the place of earlier structure which was only of ground + two upper floors..

12] As a matter of fact, the appellant has also suppressed the material fact that whatever construction he has made, it was demolished on 23.10.2017 itself. He has also not disclosed as to how many floors were there in the suit building and new construction is of how many floors. Appellant has not produced a single document to show that the construction is legal and authorized.

13] In view, thereof, the trial Court was not only justified but well within it's jurisdiction to refuse the relief of interim injunction to protect such patently illegal construction. Appeal, therefore, holds no merits and has to be dismissed.

14] It is also pertinent to note that despite rejection of Notice of Motion, by the trial Court, and the order of status quo passed by this Court on 15.12.2017, the appellant has, in blatant disregard to the said order, continued with the construction. The digital photographs of the said construction, which were taken out by the respondent corporation, as per the order passed by this Court, almost day to day on 16.12.2017, 18.12.2017, 20.12.2017, 21.12.2017, 23.12.2017, 26.12.2017, 29.12.2017 and 2.1.2018 are more than self eloquent and self speaking, to show as to, with how much impunity the appellant has violated the order passed by this Court and committed the breach thereof.

15] The subsequent reports of the site inspection dated

19.01.2018 and 03.02.2018, show that the construction was still going on and it was raised upto 80' to 90' from the ground floor. Thus, it is clear that appellant has not shown any regard and respect to the order of status quo passed by this Court also.

16] It is, therefore, necessary and incumbent to take cognizance of the Contempt Petition filed by the respondent. Accordingly Rule is issued in Contempt Petition and ad-interim relief is granted therein, in terms of prayer clause (c) by way of appointment of Court Receiver to take the suit building in custody during pendency of this petition.

17] Thus, not only the Appeal from Order is liable to be dismissed, but it needs to be dismissed with exemplary costs of Rs.1,00,000/- to be paid by the appellant to the respondent, so that it will send proper signal to one and all.

18] In view thereof Appeal From order stands dismissed with costs of Rs.1,00,000/- to be paid by appellant to respondent.

19] In view of dismissal of Appeal from Order, Civil Applications therein no more survive and the same are disposed off accordingly.

20] Rule in Contempt Petition returnable on 03.10.2018.

[DR.SHALINI PHANSALKAR-JOSHI, J.]