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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.1171 OF 2017

Smita Shashikant Padwal

... Petitioner

Vs.

The Municipal Corporation of Greater Mumbai & Ors. ... Respondents

Mr. Ajit Tamhane a/w Mr. Rohan Tamhane & Co. for the Petitioner.

Ms. K.H. Mastakar for the Respondent – BMC.

Mr. Kedar Dighe, AGP for the Respondent – State.

**CORAM : A.S. OKA &
RIYAZ I. CHAGLA, JJ.**

DATE : 16th JULY 2018

P.C.

1 Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the first and second respondents. We have heard the learned AGP for the State. Order dated 3rd July 2017 shows that the fourth respondent was represented by an advocate.

2 The grievance in this petition under Article 226 of the Constitution of India is that notwithstanding the complaints made by the petitioner, no action has been taken by the first respondent – Municipal Corporation against illegal construction allegedly carried out by the fourth respondent. There is a reply filed by Shri K.K. Annamwar,

Designated Officer – II, Assistant Engineer (Building & Factory), G/North Ward. In the reply, it is stated that a notice under Section 351 of the Mumbai Municipal Corporation Act, 1881 dated 19th September 2017 was served upon the fourth respondent. On the basis of the said notice, final order dated 10th October 2017 was passed directing demolition of the illegal construction carried out by the fourth respondent. In fact, the first respondent arranged for demolition on 3rd November 2017. However, it is pointed out in the reply that the structure could not be demolished. It is also pointed out that the fourth respondent has filed a suit in the City Civil Court in which ad-interim order was passed on 5th February 2018 which is operative till today and now the notice of motion in the suit is fixed on 20th July 2018. Exhibit-7 and Exhibit-8 are the copies of the memorandum issued by the Designated Officer-II recording that in the subject structure, the fourth respondent is running a restaurant and that after order of the City Civil Court, the fourth respondent has carried out civil work.

3 If the fourth respondent has taken undue advantage of ad-interim order passed in his suit, the said fact must be brought to the notice of the City Civil Court by the first respondent by filing an affidavit/ appropriate proceedings.

4 The stand taken in the affidavit-in-reply by the first and
second respondents is that the order of demolition passed on 10th
October 2017 could not be implemented only in view of the aforesaid
order of the City Civil Court.

5 In fact, after order dated 10th October 2017 was passed, the
fourth respondent filed a reply and after considering the said reply, a
fresh order of demolition has been passed on 20th January 2018.

6 As and when the ad-interim order passed by the City Civil
Court is vacated and there is no prohibitory order of Court of Law
preventing the Municipal Corporation from taking action on the basis of
order dated 20th January 2018, the Municipal Corporation is bound to
take immediate steps to implement the order dated 20th January 2018.
As stated earlier, if undue advantage is taken by the fourth respondent
of the ad-interim order, the Municipal Corporation must invite the
attention of the City Civil Court to the said fact.

7 Subject to what is directed as above, the petition is
disposed of. We, however, make it clear that we have made no
adjudication on the merits of the pending suit.

(RIYAZ I. CHAGLA, J)

(A.S. OKA, J)