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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER (ST) NO.768 OF 2019.
WITH
CIVIL APPLICATION (ST) NO.769 OF 2019**

Ajay Harikrishna Vishwakarma ... Appellant.
V/s.
Bombay Municipal Corporation
and others ... Respondents

Mr. Mahadeo A. Choudhari, for the appellant.
Mrs. Madhuri More, for respondent corporation.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 24th JANUARY, 2019.

P.C. :

- 1] Heard learned counsel for the appellant and respondent.
- 2] This appeal is directed against the order dated 4.01.2019, passed by the City Civil Court Mumbai, thereby dismissing the Notice of Motion No.29172 of 2012, in L.C. Suit No.4548 of 201.
- 3] The said Notice of Motion was taken out by the appellant herein for temporary injunction restraining the respondent Municipal Corporation from demolishing or pulling down the structure admeasuring 10 x 20 sq. feet. situate at village Paspoli, Morarji Nagar, Saki Vihar road, Powai, Mumbai. The said Notice of Motion was filed by the appellant in view of notice dated 15.10.2012, issued under Section 312 (1) and 314(d) of the Mumbai Municipal

Corporation Act. As per appellant, he is residing and carrying on his business in his own premises and to prove it, he has produced on record the order dated 28.5.2001 passed by the Additional Tahasildar, Kurla-1, Mulund, relating to unauthorized non agricultural use. Learned counsel for respondent Corporation, however, points out that in paragraph No.1 of the plaint, said C.T.S.number is not mentioned and in paragraph No.3 of the plaint what is stated is that the noticed structure is situated at C.T.S. No.8, survey No.1 (pt), and the said area is already declared as slum by the State Government in the year 1978. It is submitted that the C.T.S. number mentioned in the said order is 8.

4] Thus, it is clear that the appellant is taking two contrary stands; at one stage, he is saying that he is the owner of the land on which the structure is situated; whereas another stand is taken that the structure is on the private land standing in the slum area.

5] Moreover, not a single document is produced on record to prove that the legality of the said structure, like building permission or sanctioned plan obtained from the Municipal Corporation for constructing the said structure.

6] In view thereof, prima facie, on failure of the appellant to prove the legality or authorized nature of the structure, such structure cannot be protected. Accordingly Notice under Section

314(d) of the Mumbai Municipal Corporation Act came to be issued to the appellant in the year 2012 itself. The appellant has received the Notice, but not replied the same. Hence the trial Court found that as it is alleged by the respondent that the appellant has made encroachment on the public road, which is lying near Tansa pipeline, the said structure is required to be demolished. The trial Court, has accordingly refused the relief of temporary injunction by dismissing the Notice of Motion. In this discretionary order, therefore, no interference is warranted.

7] At this stage, learned counsel for the appellant submits that after receipt of the Notice of this Appeal, respondent has demolished the suit structure. Learned counsels for appellant and respondent have also produced on record the photographs of the demolition of the structure.

7] In view of demolition of the suit structure and having regard to the facts and findings arrived at by the trial Court, it is clear that appeal itself has become infructuous. No case is made to grant any protection. Hence, appeal stands dismissed.

8] In view of dismissal of Appeal itself, pending Civil Application therein no more survives and the same is disposed off accordingly.

[DR.SHALINI PHANSALKAR-JOSHI, J.]