

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****APPEAL FROM ORDER NO. 683 OF 2019****WITH****CIVIL APPLICATION NO. 805 OF 2019****IN****APPEAL FROM ORDER NO. 683 OF 2019**

Municipal Corporation
of Greater Mumbai

.....Appellant.

Vs.

Chandrashekhar Vishwanathan Pillai

.....Respondent.

Smt. Madhuri More i/by J.J. Xavier for the Appellant.
None for the Respondent.

CORAM : A. S. GADKARI, J.

DATE : 18th NOVEMBER, 2019.

PC.:-

The present Appeal is directed against an Order dated 15th October, 2018 passed by the learned Judge, City Civil Court 8, Dindoshi, Mumbai, thereby allowing the draft Notice of Motion filed by the Respondent.

2 Heard the learned counsel for the Appellant-Municipal Corporation. Perused the entire record annexed to the Appeal.

3 The record indicates that, the Respondent has challenged the notice dated 31st January, 2018 under Section 351 of the Mumbai Municipal

Corporation Act and the Order passed in furtherance thereof dated 5th October, 2018. That, by the said notice, the Corporation has directed the Respondent to remove the said unauthorized construction of mezzanine floor mentioned in the said notice dated 31st January, 2018. The record indicates that, the said structure is in existence for more than 40 years and is assessed by the Municipal Corporation. The Trial Court has recorded a *prima facie* finding that, if the Corporation is permitted to pull down the said structure, irreparable loss and harm would cause to the Respondent. It further held that, triable issues have been raised by the Respondent in its pleadings.

4 Perusal of the record would indicate that, strong balance of convenience lies in favour of the Respondent. After perusing the entire record, this Court is of the considered view that, the impugned Order does not suffer from any error, either in law or on facts.

Appeal being dehors of merits and is accordingly dismissed.

In view of the dismissal of the Appeal itself, Civil Application No. 805 of 2019 does not survive and is also disposed off.

(A.S. GADKARI, J.)