

**FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE JURISDICTION.**

**APPEAL FROM ORDER (ST) NO. 6616 OF 2019
WITH
CIVIL APPLICATION (ST) NO. 6617 OF 2019**

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
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Dr. Abhinav Chandrachud I/b Sania Sunil for the Appellant.

Mrs. Madhuri More for the Respondent/BMC.

Mr. J.S. Kini I/b S. Krishnappa for the Intervenor.

CORAM : K. K. TATED, J.

DATE : 05/04/2019

P.C.:

. Heard learned Counsel for the parties.

2 By this Appeal from Order, the Appellant is challenging the order dated 26.02.2019 passed by the City Civil Court at Bombay in draft Notice of Motion in L.C. Suit No. 432 of 2019 declining to grant any ad-interim relief in favour of the Appellant/original Plaintiff.

3 It is the case of the Appellant/ Plaintiff that Plaintiff is in possession of the commercial suit premises since long. He submits that the Respondent/Corporation issued notice under Section 351 of MMC Act calling upon the Plaintiff to submit the document about authorisation. He submits that thereafter, the Plaintiff submitted all the documents.

On the basis of that the Assistant Engineer (B&F) Ward, M/W, Designated Officer passed order dated 11.02.2019 holding that the Plaintiff's suit structure is unauthorised. He submits that in view of this order dated 11.02.2019, Plaintiff filed the suit before Bombay City Civil Court at Mumbai and prayed for injunction restraining the Corporation from taking any action of demolition till the hearing and final disposal of the suit.

4 The learned Counsel for the Plaintiff submits that Plaintiff is tenant of the suit premises. Hence, it was mandatory on the part of the Corporation to issue notice to the owner who can only produce the documentary proof in authorisation of the suit premises. He submits that Corporation instead of issuing notice to the owner holding that the suit structure is unathorised and directed Plaintiff to remove the same. He submits that Plaintiff has birth certificate of adjoining owner. On the basis of that birth certificate , the learned Counsel for the Plaintiff submits that Respondent may be restrained by order of injunction from demolition of his suit structure till the hearing and final disposal of the suit filed by him in the Bombay City Civil Court at Mumbai. He submits that if the interim protection is not granted, irreparable loss will be caused to them. He further submits that as on today Plaintiff is carrying on business on the suit premises.

5 It is to be noted that in the present proceeding bare reading of impugned order dated 26.02.2019 passed by Bombay City Civil Court at Mumbai shows that, contention raised by the Plaintiff before this court, that the suit structure stands in the slum area. When the Court called upon the Plaintiff to produce any document, he failed and neglected to do so. Not only that, on first hearing, the Plaintiff also made a stated to this Court that suit structure stands in the slum area and therefore, there is no question of issuing any notice by the Corporation under Section 351 of MMC Act. Hence, this Court on 27.03.2019 called upon Appellant / Plaintiff to place on record the Gazette in respect of the said declaration. Thereafter, the learned Counsel for the Plaintiff submits that it is not possible for them to produce the same. Considering this fact and the order passed by the Trial Court, I do not find any substance in the present Appeal from Order.

6 Hence, the following order is passed:

- a) Appeal from Order as well as Civil Application stand rejected.
- b) Hearing of L.C. Suit No. 422 of 2019 is expedited.
- c) No order as to costs.

(K.K.TATED, J.)