

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

**FIRST APPEAL NO.1842 OF 2009
WITH
CIVIL APPLICATION NO.1605 OF 2009**

Uttamchand Amichand Birawat ... Appellant
Versus
The Municipal Corporation of
Greater Mumbai ... Respondent

.....

Mr. J.V. Parmar for the Appellant.
Mrs. Sheetal Mane for MCGM.

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CORAM : K. K. TATED, J.

DATE : 29 JULY 2019

P. C. :

. Heard learned counsel for the parties.

2 By this First Appeal, the Appellant/original Plaintiff is challenging the judgment and order dated 18 December 2008 passed by the City Civil Court, Bombay in L.C. Suit No.3679 of 2005 dismissing the Appellant/Plaintiff's suit challenging the notice under Section 351 of Mumbai Municipal Corporation Act ("MMC Act") dated 9 July 2005 and order passed in pursuance of that notice dated 26 August 2005.

3 Learned Counsel for the Appellant submits that the Respondent issued notice under Section 351 of MMC Act for alleged unauthorized construction, which is described as

“Enclosing of passage by M.S. Collapsible gate in front of the shop at first floor admeasuring 9’4’’ height and 8’2’’ wide as shown in the sketch”.

4 Learned Counsel for the Appellants submits that he received instructions from his client to withdraw an appeal as well as Civil application unconditionally with liberty to make appropriate application to MCGM for regularization of M.S. Collapsible gate. He submits that the Appellant undertakes to file an application to that effect within one month from today. The statement is accepted. The Advocate for the Appellant seeks permission to withdraw the First Appeal and the civil application. The learned Counsel tenders a writing to that effect, which is marked ‘X’ for identification. Hence, the following order.

: O R D E R :

- i) Liberty granted to the Appellant to file an appropriate application for regularization of collapsible gate as described in notice dated 9 July 2005 issued under Section 351 of MMC Act, with the Respondent-MCGM within one month from today;
- ii) If the application is filed within one month from today, the Respondent-MCGM to decide the same as early as possible, but in any case, within eight weeks from the date of receipt of the application and inform the decision to the Applicant in writing;

iii) It is made clear that if the application is not filed within one month from today, the Respondent-MCGM is free to take action as per the judgment and order dated 18 December 2008 without further reference to the Court.

5 The First Appeal as well as the Civil Applicant stand dismissed as withdrawn unconditionally.

6 No order as to costs.

(K. K. TATED, J.)