

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

APPEAL FROM ORDER (ST) NO.8589 OF 2018

WITH

CIVIL APPLICATION (ST.) 8591 OF 2018

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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Mr.B.A.Lawate for the appellant

Ms.Madhuri More for the BMC

**CORAM : K. K. TATED, J
DATE : APRIL 23, 2019**

P.C.:

. Heard.

2 By this Appeal from Order, appellant original plaintiff is challenging the order dated 12.3.2018 passed by City Civil Court at Mumbai, Borivali Division, Dindoshi, Goregaon, Mumbai in draft Notice of Motion in L.C.Suit No.644 of 2018 declining to grant any ad-interim relief in favour of appellant original plaintiff.

3 In the present proceedings, Respondent Corporation issued notice under section 351 of the Mumbai Municipal Corporation Act, 1888 dated 15.7.2017 calling upon the appellant to remove unauthorised construction. That notice was challenged by the plaintiff by filing S.C.Suit No.3352 of 2017. In that plaintiff preferred Notice of Motion for ad-interim relief. That was rejected. Hence, plaintiff preferred Appeal from Order (ST) No.33583 of 2017 with Civil Application (ST) No.33585 of 2017. In that Appeal from Order, this court by order dated 8.12.2017 directed Respondent designated offer to pass speaking order on the plaintiffs Application considering the assessment order in respect of the suit property. Thereafter the Assistant Engineer (B & F), Ward P/North passed speaking order dated 24.2.2018 holding that plaintiff failed to prove authorisation of the suit property. Paragraph 1 of the said order reads thus:

"1) Xerox copy of Asstt. Assessor & Collector P/North Ward.

You have submitted xerox copy of Asstt. Assessor & Collector P/North Ward, issued by M.C.G.M. having no-PN08014730000, in the year 2016-17, name of Shri Bharat

Madhav Yadav, and same send for verification to Asstt. Assessor & Collector P/North Ward . After verification, as per remarks from Asstt. Assessor & Collector P/North Ward, where in clearly mentioned that the notice structure not related this Assessment Bill, which does not prove the authorization/existence of notice structure i.e. unauthorised construction of ground floor structure with BM Wall and A.C.Sheet roof admeasuring (approximately) 30' x 15' x (12' + 8')/2 height at above address prior to datum line fixed for tolerance of commercial structure i.e. 01.04.1962."

4 On the basis of subsequent order dated 24.2.2018, Trial Court rejected plaintiff's Application for ad-interim relief. Bare reading of paragraph 7 and 8 of the impugned order dated 12.3.2018 clearly shows that Trial Court has considered all the documents including order dated 24.2.2018 passed by designated officer of the Respondent Corporation.

5 Considering these facts, I do not find any reason to entertain the present Appeal from Order. In any case, Notice of Motion is pending for hearing on its own merits.

6 Considering these facts, following order is

passed:

- a. Trial Court is directed to decide Notice of Motion preferred by appellant on its own merits without influencing the order passed by this court.
- b. Appeal from Order stands rejected.
- c. In view thereof, nothing survives in Civil Application (ST) No.8591 of 2018. Same stands dismissed as infructuous.
- d. No order as to costs.

(K.K.TATED, J.)