

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

**APPEAL FROM ORDER NO. 748 OF 2019
WITH
CIVIL APPLICATION NO. 890 OF 2019
AND
CIVIL APPLICATION NO. 1089 OF 2019**

Hotel Amana International	...Appellant
vs.	
Municipal Corporation of Greater Bombay	...Respondent

Mr.Pradeep Thorat i/b. S.K. Dubey for Appellant.
Ms.Madhuri More for Respondent.
Mr.Kuldip T. Pawar for Intervener in CAA 1089/2019.

CORAM : S.C. GUPTE, J.

DATE : 3 OCTOBER 2019

P.C. :

This appeal from order challenges an ad-interim order passed by the City Civil Court, Borivali Division at Dindoshi, on a draft notice of motion filed by the Appellant (original Plaintiff) in his suit. There is a delay of 76 days in filing the appeal from order. There is a civil application taken out for condonation of that delay, being Civil Application No.1214/2019. The civil application is not on board. It is, however, mentioned; called out and taken on record by consent of counsel. For the reasons stated in the civil application, the delay is condoned. The civil application is disposed of.

2 The subject matter of controversy in the suit is a notice issued under Section 354A of the Mumbai Municipal Corporation Act ("MMC Act") and a notice issued under Section 448 of the MMC Act in pursuance of that notice. There is a specific order passed by the competent authority of the corporation in the matter. There is nothing before the trial court to show that the notice structure, which included

unauthorized construction of portions on second and third floors of the suit building was either authorized or that it always had existed at site. The learned trial judge considered the Defendant's case supported by photographs produced by the Defendant corporation that the notice structures were already pulled down by the corporation. The trial court observed that when the Defendant had come with an express case that they had demolished the suit premises on 1 October 2018 in pursuance of notice issued under Section 488 of the MMC Act on 13 November 2018, it was incumbent upon the Plaintiff to make out a case that the suit structure was still in existence by tendering photographs. In the absence of any material produced by the Plaintiff, the court believed the Defendant corporation's case, which was backed by an entire compilation of notices, speaking orders and photographs including an order showing rejection of the Plaintiff's regularization application. The court, in the premises, observed that there was no *prima facie* case for protecting the Plaintiff.

3 There is no infirmity to be found in the impugned order. In any event, in its affidavit filed before this court, the Respondent corporation has taken an unequivocal stand that the offending structures have been fully demolished. In the premises, there is no question of entertaining this appeal from order. The appeal from order is dismissed.

4 In view of the disposal of the appeal from order, the civil applications taken out therein for stay and intervention, namely, Civil Application Nos.890/2019 and 1089/2019, do not survive and are disposed of.

(S.C. GUPTE, J.)