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

**APPEAL FROM ORDER NO.599 OF 2018
WITH
CIVIL APPLICATION NO.839 OF 2018**

Ramesh Ganpat Salvi ... Appellant.

V/s.

Municipal Corporation of
Greater Mumbai and anr ... Respondents

Mr. Sanjay Dutta Gupta a/w Ms. Sheetal Gupta, for the
Appellant.

Mrs. Madhuri More, for respondent corporation.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 8th JANUARY, 2019.

P.C. :

1] Heard learned counsel for the appellant and respondents.

2] This appeal takes an exception to the order dated 20th
February, 2018, passed by the City Civil Court, Mumbai, Borivali
Division, Dindoshi (Branch), in Notice of Motion No.46 of 2018 in L.C.
Suit No.3050 of 2017,

3] The said Notice of Motion was preferred by the present
appellant seeking relief of interim injunction restraining respondent
Municipal Corporation from acting in pursuance of the Notice dated
13.09.2017 issued under Section 351 of the Mumbai Municipal

Corporation Act and the consequent order dated 16.10.2017 passed in pursuance thereof.

4] As per case of the appellant, he is in possession of the room No.4, admeasuring 8' x 30' ground plus mezzanine floor, Chitrakot Seva Samiti, Pascal Correa Chawl, Pascal Correa Compound, Vasri Hill, Goregaon, Mulund Link Road, Goregaon (W), Mumbai, which is in existence since prio to 1961-62. He has acquired the said room in the year 1978 and using the same for residential purpose. He has not carried out any unauthorized construction. Hence he was surprised to receive the impugned notice from the Municipal Corporation alleging that he has unauthorizedly covered common pathway on the ground floor and made the construction of first floor using Ladi Coba Slab for flooring and A.C. Sheet roof on the common pathway. He has replied the said notice immediately and produced documentary evidence to prove his possession over the said structure. The Municipal Corporation, has however, rejected his contention and passed the speaking order, allowing demolition of the unauthorized structure.

5] The grievance of the learned counsel for the appellant is that the order passed by the Municipal Corporation is without any application of mind. The documents of the appellant were considered on the basis of datum line for tolerable structures of commercial

nature, though the appellant is using the said room for his residential purpose. It is submitted that in view of this total non application of mind, this Court has directed the respondent to file affidavit to show whether the structure is being used for commercial purpose. Accordingly, additional affidavit is filed reiterating that the structure is used for the commercial purpose.

6] According to appellant, when he is admittedly using it for residential purpose, it is necessary to have this issue decided by the trial Court, after the parties adduce evidence before it and till then the suit structure is required to be protected.

7] However, as rightly, submitted by learned counsel for the respondent, there is hardly any substance in the contention raised by learned counsel for the appellant. Even assuming that appellant is using the room for residential purpose the photographs and the inspection report of the additional construction carried out by him clearly goes to show that he has unauthorizedly covered common pathway on the ground floor and made construction of first floor using Ladi Coba Slab for flooring and Supplementary A.C. Sheet roof on the common pathway. Therefore, question for consideration is not whether he is using said premises for residential or commercial purpose, but the real question for consideration is whether the construction of additional structure is legal or authorized.

Admittedly not a single document is produced on record to show that the appellant has applied for permission to cover this common pathway on the ground floor or he has carried out the construction of first floor after obtaining the requisite permission from the Municipal Corporation. The photographs are self speaking to prove that no permission could be granted by the corporation for covering the common pathway. On account of this additional unauthorized construction, there are complaints received from the adjoining occupiers as lot of inconvenience is caused to them. There can be no question of granting such permission for construction of first floor, which is seen in the photograph.

8] Considering all these aspects as the trial Court has rightly refused interim relief of injunction, in Appeal from such discretionary order, no interference is warranted. Therefore, Appeal stands dismissed.

9] In view of dismissal of Appeal itself, pending Civil Application therein does not survive and the same is disposed off.

[DR.SHALINI PHANSALKAR-JOSHI, J.]