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

**CIVIL APPLICATION NO. 1435 OF 2018
IN
FIRST APPEAL NO. 1548 OF 2013**

Amanullah Fateh Mohd. Khan ... Applicant
V/s.
The Municipal Corporation of Greater Mumbai ... Respondent

.....
Mr. B. S. Shukla for the Applicant.
Mrs. Sheetal Mane for the Respondent-MCGM.
.....

CORAM : K.K. TATED, J.

DATE : 25th JUNE, 2019.

P.C.:

Heard the learned Counsel for the parties.

2. By this Civil Application, Applicant original Plaintiff is seeking permission to carry out repairs to the Suit structure namely Shop No. 11, made of patra sheet and A.C. sheet roof, Manjuwadi, Gopal Mistry Compound Dharavi Cross Road, Mumbai-400 017, pending the hearing and final disposal of appeal. The learned Counsel for Applicant relies upon the photograph of the suit structure. He submits that suit structure is require some urgent repair. Hence,

Applicant may be permitted to carry out repairs without prejudice to the rights and contentions of both the parties.

3. On the other hand, the learned Counsel appearing on behalf of the Respondent-Corporation vehemently opposed the present Civil Application. Advocate for the Respondent-Corporation submits that they filed affidavit in reply dated 16th June 2017 in which it is specifically stated that the suit structure was demolished on 17th March 2010 itself, by following due process of law. In support of this contention, Advocate for Respondent relies on para 7 of the said Affidavit-in-Reply which reads thus:

“7. I say that these respondents demolished the notice structure on 17.3.2010 by following due process of law. I am annexing herewith the photographs showing demolition of the notice structure and I reserve my right to produce demolition report as and when necessary. I say that the appellant filed the suit bearing No. 645 of 2010 challenging the notice and order. On 18.3.2010, when the matter was before the City Civil Court it was pointed out to the court that the structure was already demolished and produced the photographs. The Hon'ble Court directed the Corporation to consider the documents for getting

alternate accommodation. I say that accordingly the representation made by the appellant on 3.5.2010 was considered and hearing was given to the plaintiff, i.e. Appellant on 21.7.2011. The concerned Asstt. Commissioner G/North Ward after considering the documents passed the order dt. 30.7.2011 whereby informing that appellant is not entitled for alternate accommodation.”

4. The learned Counsel for Respondent-Corporation, submits that in view of these facts, nothing survives in present Civil Application and same to be dismissed with cost.
5. I heard both the sides. Bear reading of affidavit in reply filed by the Corporation shows that the suit structure was demolished on 17th March 2010. Those facts were pointed out by respondent, even before the Trial Court. In view of these facts, there is no question of allowing the present Civil Application.
6. Hence, the Civil Application rejected.
7. No order as to costs.

(K.K. TATED, J.)