

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

**APPEAL FROM ORDER NO. 505 OF 2017
WITH
CIVIL APPLICATION NO.647 OF 2017**

Smt. Nida Atik Naik ..Appellant

v/s.

Municipal Corporation for Gr. Bombay ..Respondents

Mr. Pradip Thorat a/w. Sachin Gelye for the Appellant
Mrs. Madhuri More for the Respondent-MCGM.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 25th FEBRUARY, 2019.**

P.C.

1. The appellant has challenged the Order dated 5th May, 2017 whereby the Notice of Motion No. 4601 of 2015 filed in L.C. Suit No. 2922 of 2015 came to be dismissed.
2. The appellant herein had filed a suit for declaration and permanent injunction. During the pendency of the suit he had sought to restrain the respondent Corporation from demolishing the structure i.e. part and parcel of shop no. A-02, Ground floor with

mezzanine floor, Sheetal Apartment CHS Ltd. Gunpowder Road, Mazgaon, Mumbai-10. The respondent Corporation had issued a notice dated 2nd November, 2015 under Section 352A of the Mumbai Municipal Corporation Act, to show cause as to why the suit premises should not be demolished. The plaintiff had challenged the said notice in the Suit No. 2922 of 2015. While rejecting the application, the learned Judge has observed that the appellant-plaintiff had not prima facie established that Shop No.A-02 i.e. the suit premises and shop no.2-C is one and the same premises. The learned Judge had also held that the plaintiff had not produced any prima facie material to show existence of the mezzanine floor prior to the purchase.

3. The learned Counsel for the appellant submits that the final order had been passed pending the notice of motion No.4601 of 2015 and that the appellant plaintiff had already filed Chamber Summons for amending the plaint and bringing on record the facts relating to the passing of the final order. He further submits that the appellant-plaintiff has also sought leave to produce additional documents to show existence of mezzanine floor. He submits that the said chamber summons has been allowed after dismissal of the Notice of

Motion No. 4601 of 2015. He submits that in view of the subsequent events, the appellant-plaintiff has filed another Notice of Motion No. 2224 of 2017 seeking to restrain the respondent Corporation from demolishing or pulling down the structure referred to in the notice dated 2.11.2015 issued under Section 354 of the MMC Act. The said notice of motion is still pending decision. The learned Counsel has submitted that the pleadings are completed and the subsequent notice of motion is pending for hearing.

4. This Court, by Order dated 24th November, 2017 had directed the parties to maintain status quo in respect of the subject structure. Considering the fact that the appellant-plaintiff has filed another notice of motion No.2224 of 2017 seeking same relief in view of the subsequent events and additional documents produced, with consent, the status quo order is extended till disposal of the said notice of Motion No. 2224 of 2017.

5. The learned Judge, City Civil Court, at Bombay is directed to dispose of the Notice of Motion No.2224 of 2017 as expeditiously as possible, and in any event, within a period of three months from the date of receipt of this order. This Court has not gone into the merits

of the matter and all points and contentions are specifically kept open.

6. Appeal from order stands disposed of in above terms.

7. In view of disposal of the appeal from order, Civil application does not survive and the same stands disposed of.

(ANUJA PRABHUDESSAI, J.)