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

**APPEAL FROM ORDER NO. 464 OF 2018
WITH
CIVIL APPLICATION NO. 611 OF 2018
IN
APPEAL FROM ORDER NO. 464 OF 2018**

Indrajeet Singh Saluja ..Appellant
vs.
Municipal Corporation of Greater Mumbai ..Respondent

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Mr. Haresh Pawar for the appellant.
Mrs. Madhuri More for respondent – MCGM.
Mr. Umesh C. Bodkhe, A.E. (M), K/W Ward.
Mr. Kunal S. Mundle, S.E. (M), K/W Ward.
Mr. Chetan G. Shirudkar, J.E. (M), K/W Ward.

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CORAM : M.S.KARNIK, J.

DATE : 25th JUNE, 2019

P.C. :

Heard learned Counsel for the appellant.

2. The challenge in this Appeal is to an order dated 21/5/2018 passed by the Judge, City Civil Court, Mumbai, refusing to grant any interim protection to the structure in question. The structure in question is a shop. According to the

notice issued by the corporation dated 9/2/2016 under Section 314 of the Mumbai Municipal Corporation Act ('MMC Act' for short), the appellant has encroached upon the footpath of Juhu Road, Opposite Lido Petrol Pump, Santacruz (W), Mumbai, in violation of the provisions of the MMC Act. In reply to the notice the appellant relied on as many as 27 documents. By the order dated 18th May, 2018 impugned before the Judge, City Civil Court, the Designated Authority considered the documents and called upon the appellant to remove the extended portion of the structure which is extended beyond the road line within 48 hours.

3. Learned Counsel for the appellant invited my attention to the order dated 18th May, 2018 passed by the Assistant Engineer (Maintenance), K/West Ward. The datum line as per the policy of the corporation enforced is 1/1/2000. There are certain documents at Item No.4 and Item No.6 which are relied upon by the appellant appear to be those before the datum line. However, from the remarks it is not very clear as to

why the said documents are discarded. There appears to be some ambiguity in the remarks column while rejecting these documents.

4. Learned Counsel for the corporation, on instructions of the officer concerned Shri Umesh C. Bodkhe submits that the officer concerned will hear the appellant afresh on 1st July, 2019, at 11.00 a.m. and pass a fresh order within a period of 2 weeks therefrom.

5. In this view of the matter, the appellant to appear before the Assistant Engineer (Maintenance), K/West Ward, on 1st July, 2019, at 11.00 a.m.

6. The officer to pass a fresh order within a period of 2 weeks therefrom.

7. Learned Counsel for the appellant states that he would withdraw the suit as nothing survives in the suit. He would take steps to withdraw the suit.

8. The Appeal is partly allowed. In view of the disposal of the Appeal, nothing survives for consideration in the Civil Application. The Civil Application is also disposed of.

(M.S.KARNIK, J.)