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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER ST. NO. 14946 OF 2019**

Sunita Sakharam Maharao ..Appellant
vs.
Municipal Corporation of Greater Mumbai ..Respondent

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Ms. Shashikala H. Rajak a/w. Shri Bhushan Vardhamane for
appellant.
Mrs. M. More for respondent - MCGM.

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**CORAM : M.S.KARNIK, J.
DATE : 14th JUNE, 2019**

P.C. :

Heard learned Counsel for the appellant and learned
Counsel Mrs. More for respondent – Corporation.

2. The order under challenge is an order dated 20th May, 2019 passed by the Judge, City Civil Court, Mumbai, refusing to grant ad-interim relief in the Notice of Motion taken out by the appellant/original plaintiff for protection of the suit structure.

3. The challenge in the suit is to the notice under Section 351 of the Mumbai Municipal Corporation Act ('MMC Act' for short) dated 5/2/2019. The allegation is that the appellant did unauthorised construction by vertically extending the room shown in the sketch attached to the notice. According to plaintiff, the suit structure was in existence prior to the datum line of 17/4/1964 and the plaintiff was only carrying out tenantable repairs. Certain documents were relied upon to show that the structure was in existence.

4. In this Appeal the appellant relied upon an extract which is at page 41 which shows that the structure was assessed for the first time on 31/3/1962. On the basis of this document and other documents on record, learned Counsel for the appellant would submit that the structure is in existence prior to the datum line. There is some dispute whether the extract was on record when the response was filed by the appellant to the notice under Section 351 of the MMC Act. According to learned Counsel for the appellant the said extract was furnished but

learned Counsel for the Corporation submits that it is not a part of the record.

5. Learned Counsel for the corporation pointed out that the structure in question is a chawl and the appellant has unauthorisedly and without any permission carried out vertical extension to the structure. It is vehemently submitted on behalf of the respondent - corporation that offending structure was not in existence before the datum line.

6. It appears that even this extract which is at page 41 was not pointed out to the trial Court when the Notice of Motion was considered for the grant of ad-interim relief.

7. Be that as it may, in the interest of justice, in my opinion, the said extract which indicates that some structure was in existence prior to the datum line needs to be considered by the Designated Officer, 'L' Ward. Whether the structure in question was a chawl or whether the appellant has constructed an unauthorised vertical extension after the datum line which

requires demolition is a question which will have to be decided by the Designated Officer.

8. The appellant would therefore appear before the Designated Officer, 'L' Ward on 20th June, 2019 at 11.00 a.m. along with all the documents in support of her case. The appellant may also file a written response along with supporting documents on that day if she so desires.

9. The Designated Officer to pass a fresh order within a period of 2 weeks from 20th June, 2019 after considering the documents and written submissions that may be placed on behalf of the appellant.

10. In this view of the matter, the Appeal is partly allowed in the above terms. No action to be taken against the structure till the communication of the decision of the Designated Officer. The appellant not to change the nature of the structure in the meantime.

11. Consequently as nothing survives in the suit, the appellant to take steps to withdraw the suit within a period of 1 week from today.

12. The Appeal is disposed of accordingly.

(M.S.KARNIK, J.)