

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

**APPEAL FROM ORDER (ST.) NO.20619 OF 2016
WITH
CIVIL APPLICATION (ST.) NO.20620 OF 2016**

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
---	---------------------------

Mr.B.S.Shukla for the appellant

Mrs.Oorja Dhond for the BMC

**CORAM : K. K. TATED, J
DATE : APRIL 1,2019**

P.C.:

. Heard.

2 By this Appeal from Order appellant original plaintiff is challenging the order dated 14.7.2016 passed by City Civil Court, Borivali Div., Dindoshi, Mumbai in Draft Notice of Motion No.2119 of 2016 in L.C.Suit No.1899 of 2016 declining to grant any ad-interim relief in favour of plaintiff.

3 The learned counsel for the Appellant submits that Respondent Corporation failed to

comply their Circular dated 1.4.2006 (Guidelines for action to be taken under relevant provisions of Mumbai Municipal Corporation Act, 1888 Act for demolition of unauthorised structure).

4 The learned counsel for the plaintiff relies on paragraph 4 of the said circular which reads thus:

"It is made clear that in case where an unauthorised construction is completed, even though very recently, a notice under section 351 of the M.M.C. Act should be issued and no action under section 354A of the M.M.C. Act should be taken against such construction."

5 The learned counsel for the plaintiff submits that as the Respondent Corporation failed to comply their circular, this Hon'ble Court be pleased to protect the structure till the hearing and final disposal of the said Notice of Motion. He also submits that even Trial Court by its order dated 14.07.2016 granted interim protection for three weeks.

6 On the other hand, the learned counsel for the Respondent vehemently opposed the present Appeal from Order. She submits that Trial Court specifically recorded in paragraph

4 and 5 of the impugned order that appellant has placed on record documents pertaining to some other construction. Not only that, they placed on record photographs showing that construction was going on without obtaining any permission from them. Therefore, there is no question of granting any protection.

7 Heard.

8 It is to be noted that Notice of Motion is pending for hearing on its own merits.

9 Considering the submissions made by the learned counsel for the Appellant and observation made by court below in paragraph 4 and 5 of the impugned order, I am satisfied that the Appellant failed to make out any case for ad-interim relief till the hearing and final disposal of Notice of Motion. Hence, following order:

- a) Appeal from Order as well as Civil Application stands dismissed as withdrawn.
- b) Hearing of Notice of Motion No.2119 of 2016 in L.C.Suit No.1899 of 2016 is expedited.
- c) This court expects Trial Court to decide the said Notice of Motion as early as possible but in any case on or before 31.07.2019.
- d) Parties are at liberty to complete their pleadings on or before 04.05.2019.

- e) Trial Court to decide Notice of Motion No.2119 of 2016 on its own merits.
- f) No order as to costs.

(K.K.TATED, J.)