

DDR

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

APPEAL FROM ORDER NO. 750 OF 2018

Heks Reality Project & ors. ..Appellants
vs.
Sangeeta Paul Thomsan & anr. ..Respondents

....
Shri G.S. Godbole i/b. Ms. Kavita A. Shah for appellants.
Shri V.S. Kapse for respondent No.1.

....

CORAM : M.S.KARNIK, J.

DATE : 17th JULY, 2019

P.C. :

Heard learned counsel for the appellants and learned
counsel for the respondents.

2. Learned counsel for the appellants states that pursuant to the notice issued under Section 351 of the Mumbai Municipal Corporation Act, the suit structure has been demolished. He would further contend that there are some discrepancies in the averments made in the Plaint regarding location of the suit structure and the report of the Court

Commissioner which gives details of the structure in question. Shri Godbole would submit that though the structure is demolished, the plaintiff is again and again reconstructing the suit structure.

3. Be that as it may, ad-interim order was passed on 12/9/2018. In the interim order it is noted that unless the detailed reply is filed to the notice of motion, at this ad-interim stage, the defendants cannot be permitted to take forcible possession. Shri Godbole has serious objection to the Court Commissioner's report.

4. As now a detailed affidavit-in-reply has been filed by the defendant, it would be appropriate to direct the City Civil Court to dispose of the Notice of Motion itself within a period of 4 weeks from today.

5. It is made clear that the trial Court will decide the Notice of Motion on its own merits without being influenced by any observations made while granting ad-interim order. Further

it is also made clear that learned trial Court will take into consideration the various objections raised by the defendant to the Court Commissioner's report in the context of the plea raised by the plaintiff in the Plaint.

6. Keeping all contentions open, the Appeal is disposed of in terms of the above directions.

7. Learned counsel Shri Godbole states that the defendant has objected to the Court Commissioner's report by filing a reply. Needless to mention that the issue will be decided also with reference to the objections to the Court Commissioner's report.

(M.S.KARNIK, J.)