

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

**APPEAL FROM ORDER (ST) NO. 26669 OF 2019
WITH
INTERIM APPLICATION NO. 1 OF 2019**

Ganesh Atmaram Tandel ...Appellant/Applicant
vs.
The Mumbai Municipal Corporation & Anr. ...Respondents

Mr.A.Y. Sakhare, Senior Advocate with Shriram Kulkarni, Hemant G. Ghadigaonkar, D. Halwai and A.A. Siddiquie i/b. A.A. Saddiquir & Associates for Appellant.

Ms.Madhuri More for Respondent – MCGM.

Mr.Amol A. Koli, Jr. Engineer, Bldg. & Factory Department, L-Ward

CORAM : S.C. GUPTE, J.

DATE : 3 OCTOBER 2019

P.C. :

Heard learned Counsel for the parties.

2 This appeal from order challenges an ad-interim order passed by the City Civil & Sessions Court at Greater Mumbai on an application on a notice of motion. Originally, on an interlocutory application taken out in the notice of motion by the Appellant (original Plaintiff) challenging the notice issued by the Respondent corporation under Section 354A of the Mumbai Municipal Corporation Act, the Plaintiff's notice of motion was dismissed by the trial court. The Plaintiff's appeal from that order was rejected by this court on 19 August 2019. This court had particularly observed that the Plaintiff had no case that the structure, i.e. the second floor of the notice structure, was a protected structure either as an authorized structure or as a structure existing as of the datum line. After the appeal was dismissed by this court, the Plaintiff moved one more draft notice of motion before the trial court. The Plaintiff prayed for protection of the suit

premises during the pendency of the then proposed application on his part for regularization of the suit structure. Based on this application, ad-interim protection in respect of the suit structure was prayed for by the Plaintiff. The court, after taking note of what had transpired in the matter, observed that the request was nothing but a last moment effort to anyhow nullify the order passed by the trial court and upheld by this court in the appeal from order as noted above. The court, in the premises, refused to grant any ad-interim relief to the Plaintiff. There is absolutely nothing wrong with the impugned order of the trial court. There was no new fact, which could have prompted the Plaintiff to take out a fresh notice of motion, in the first place. Secondly, there is absolutely no further material produced before the court in support of his application for ad-interim protection.

3 Mr.Sakhare, learned Senior Counsel appearing for the Appellant/ Plaintiff, relies on an online application made by the Plaintiff for regularization of the suit structure. This application, in the first place, was made on 25 September 2019, i.e., after the impugned order was passed by the trial court. It, accordingly, does not avail the Plaintiff to challenge the impugned order. Secondly, and at any rate, as pointed out by the learned Counsel for the Respondent corporation, this online application was rejected by the corporation. The corporation's remarks in this behalf are on its website. The rejection was, of course, technical and there was a request for resubmission of the application after due compliance. There is nothing to show that after this online communication, any fresh proposal has been submitted by the Appellant/Plaintiff. In any event, we are, in the present appeal from order, examining the correctness and propriety of the impugned order. Any fresh application, even if made by the Appellant / Plaintiff, cannot avail him for that purpose.

4 The appeal from order is, accordingly, dismissed.

5 In view of the disposal of the appeal from order, the interim application does not survive and is disposed of.

(S.C. GUPTE, J.)