

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

**APPEAL FROM ORDER (STAMP) NO.31755 OF 2018**  
**ALONG WITH**  
**CIVIL APPLICATION (STAMP) NO.35963 OF 2018**  
**AND**  
**CIVIL APPLICATION (STAMP) NO.31757 OF 2018**

|                                                     |                          |
|-----------------------------------------------------|--------------------------|
| Swift Chemicals Pvt. Ltd., Mumbai                   | .... Appellant-Applicant |
| V/s.                                                |                          |
| Municipal Corporation of Greater<br>Mumbai and Anr. | .... Respondents         |

Mr. Kaushal Tamhane, with Mr. Abhilash Chitre, I/by M/s. Dhanuka & Partners, for the Appellant-Applicant.

Mrs. Madhuri More for Respondent No.1-MCGM.

**CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.**

**DATE : 18<sup>TH</sup> JANUARY, 2019.**

**P.C. :**

1. Heard learned counsel for the parties.
2. Civil Application (Stamp) No.35963 of 2018, seeking condonation of delay of one day in filing the 'Appeal from Order', is allowed. By consent, the Appeal is taken up for hearing forthwith.
3. This Appeal is directed against the order dated 27<sup>th</sup> September 2018 passed by the City Civil Court, Mumbai in Notice of Motion No.3482 of 2018, whereby the ad-interim relief of interim mandatory nature is rejected by the Trial Court.

4. Considering that the Trial Court has already exercised its discretion in rejecting the ad-interim relief, which is of interim mandatory nature and which is to be granted in very rare and exceptional cases, it would not be proper for the Appellate Court to interfere in the said exercise of discretion; especially when the Notice of Motion is also pending before the Trial Court.

5. Hence, the Trial Court can, while hearing the Notice of Motion, consider all the contentions, which may be raised by the Appellant. No such case of urgency is made out, as the order of sealing the factory premises is taken place in July, 2018; the order of the Trial Court is passed on 27<sup>th</sup> September 2018 and hence, it would be just, proper and legal also to direct the Trial Court to decide the Notice of Motion itself, instead of this Court interfering in the discretion exercised by the Trial Court.

6. The Appeal, therefore, stands dismissed.

7. The Trial Court is directed to decide the Notice of Motion as expeditiously as possible.

8. In view of the above, Civil Application (Stamp) No.31757 of 2018 pending in the Appeal does not survive and the same stands disposed off as infructuous.

**[DR. SHALINI PHANSALKAR-JOSHI, J.]**