

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

**APPEAL FROM ORDER NO. 94 OF 2019
WITH
CIVIL APPLICATION NO. 120 OF 2019**

Sanjay Shrikrishna Shirvastav	...	Appellant
V/s.		
Sanjay Babubhi Supariwala & Anr.	...	Respondents

Mr.Kunal Bhanage a/w. Mr.Akshay Pawar for Appellant.
Mr.R.P. Ojha for Respondent No.1.
Ms.Madhuri M. More for Respondent No.2.

CORAM : A.S. GADKARI, J.

DATE : 12th December 2019.

PC. :

1] By the present Appeal, the appellant has impugned Order dated 11th October 2018 passed in Notice of Motion No.1807 of 2018 in L.C. Suit No.1354 of 2018, thereby dismissing the said Motion.

2] Heard Mr.Bhanage, learned counsel for the appellant, Mr.Ojha, learned counsel for respondent No.1 and Ms.More, learned counsel for respondent No.2-Corporation. Perused the entire record annexed to the Appeal.

3] The record indicates that, the respondent No.2-Corporation has issued a notice dated 17th October 2017 under Section 351 of the Mumbai

Municipal Corporation Act, 1988 (for short, “said Act”) to the appellant calling upon him to remove and/or demolish the unauthorized vertical extension of existing structure at the first floor (suit premises) more particularly mentioned in the notice. The respondent No.2-Corporation has also appended sketch of the suit structure to the said notice. In furtherance of the said notice and after hearing the appellant, the respondent No.2-Corporation issued Order dated 6th February 2018 calling upon the petitioner to remove and/or demolish the suit structure and in the alternative, the corporation will demolish the same and will recover necessary charges from the appellant. The appellant filed the aforesaid suit challenging the said Notice dated 17th October 2017 and Order passed thereto on 6th February 2018 by way of aforesaid suit and had also taken out Notice of Motion No.1807 of 2018. The Trial Court by its impugned Order dated 11th October 2018 has dismissed the said Motion as noted hereinabove.

4] A perusal of record would clearly indicate that, without their being any lawful permission from any Competent Authority or Planning Authority to erect the said structure, the appellant has unauthorizedly and/or illegally constructed the same.

5] Mr.Bhanage, learned counsel for the appellant fairly conceded to the fact that, there is no permission available on record to indicate that either the respondent No.2-Corporation or any other Competent Authority/Planning Authority has granted permission to the appellant to erect and/or construct the

said structure.

6] In the absence of permission from the Corporation or any other Planning Authority to erect and/or construct the said suit structure, the appellant cannot be permitted to continue with the said illegality under the seal a Court. No *prima-facie* case for grant of injunction is made out. Balance of convenience does not lie in favour of Appellant.

After perusing the entire record, this Court is of the considered view that, the Trial Court has not committed any error while dismissing the said Motion.

7] Appeal being dehors of merits is accordingly dismissed.

8] In view of dismissal of the Appeal, nothing survives in the Civil Application and is accordingly disposed off.

[A.S. GADKARI, J.]