

vks

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

**APPEAL FROM ORDER (ST) NO.34642 OF 2018
WITH
CIVIL APPLICATION (ST) 34644 OF 2018.**

Savio Thomas Antao ... Appellant.
V/s.

Municipal Corporation of
Greater Mumbai ... Respondent

Mr. Pratap Singh a/w Mr. Shailesh Pal, for the
appellant.

Mrs. Madhuri More, for respondent corporation.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 22nd JANUARY, 2019.

P.C. :

1] Heard learned counsel for the appellant and respondent.

2] This appeal is directed against refusal of ad-interim relief
by order dated 3.11.2018, in Draft Notice of Motion in Suit No.2905 of
2018.

3] The appellant herein has challenged the Notice dated 31st
October, 2018, issued by Assistant Superintendent (Market) Division
5, directing the appellant to stop fowl and fowl cutting licence and
selling the chicken in a shop namely Savio Chicken Shop. The said
notice refers to, two earlier notices dated 13.01.2017 and 18.03.2017,
by which opportunity was given to the appellant to show cause why

his licence should not be cancelled. Despite that the appellant failed to give satisfactory reply and as a result thereof, his licence was cancelled and he was declared as defaulter.

4] The appellant, being aggrieved, has filed suit and the Notice of Motion. The Trial Court, has however, rejected ad-interim relief. Hence the instant appeal.

5] The submission of learned counsel for the appellant is that the appellant has already filed an appeal challenging the notice dated 13.01.2017 and the said appeal is pending before the Assistant Commissioner, B & F ward, but without deciding the said Appeal, the action is taken. Even part of the portion was demolished.

6] However, the perusal of the order passed by the trial Court goes to show that earlier also Suit No.1571 of 2015 was filed by the appellant in which Notice of Motion No.78 of 2016 was preferred. As ad-interim relief was not granted therein, the suit structure came to be demolished.

7] According to learned counsel for the appellant, the suit was filed by his father and not by him. However, considering the fact that the licence of the appellant's business is cancelled in pursuance of the notice issued earlier, the trial Court was justified in not granting ad-interim relief.

8] Admittedly, the Notice of Motion is pending and all the

contentions of the parties will be decided in the same. At this stage, no case is made out to interfere in the discretion exercised by the trial Court. The appeal, therefore, being without merit stands dismissed.

9] In view of dismissal of Appeal itself, pending Civil Application therein no more survives and the same is disposed off accordingly.

[DR.SHALINI PHANSALKAR-JOSHI, J.]