IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.4422 OF 2018
IN
FIRST APPEAL NO.1286 OF 2018
WITH
FIRST APPEAL NO.1286 OF 2018

Sushila Ramanuj Tiwari ...Appellant
Versus
Municipal Corporation for Greater Mumbai ...Respondent

.....

Mr. Sandeep Mishra with Mr. Prakash Mishra for the Applicant.
Ms Oorja Dhond for the Respondent

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 26TH JUNE, 2019.

P.C.:-

As far as interim relief is concerned, it is seen that by the impugned judgment and order dated 15th November, 2018, the Trial Court has dismissed the suit filed by the Appellant-Plaintiff.

2. The Appellant-Plaintiff has filed the suit challenging the notice issued under Section 351 of the Mumbai Municipal Corporation Act, 1888. By the said notice the Corporation had called upon the Appellant-Plaintiff to demolish the suit structure. The Plaintiff has claimed that the suit structure was existing prior to datum line and

that he had repaired the suit structure in 1961. The Appellant had filed the L.C. Suit No.4748 of 1998 in which directions were given to the Defendant to follow due process of law. The evidence on record prima facie indicates that the Appellant was in possession of shed admeasuring 17ft x 10ft and 14ftx 11 ft. The notice indicates that the Appellant has constructed additional structure of 5.85 m x 3m, which has been shown in the sketch. The Appellant has denied having constructed any structure. The question whether subject matter of the notice forms part of the existing shed or not needs to be decided on merits. The Appeal is already admitted. The demolition of the structure would render the Appeal infructuous.

3. In the light of above, interim relief is granted in terms of prayer clause (a).

4. The civil application stands disposed of.

5. Considering the narrow controversy involved, hearing of the Appeal is expedited.

(SMT. ANUJA PRABHUDESSAI, J.)

Megha Parab Digitally signed by Megha Parab Date: 2019.07.15 11:51:26 +0530