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

**APPEAL FROM ORDER (ST) NO.36070 OF 2018
WITH
CIVIL APPLICATION (ST) NO.36072 OF 2018
IN
APPEAL FROM ORDER (ST) NO.36070 OF 2018**

Kesari Haridas Mali ... Appellant.
V/s.

The Municipal Corporation
of Greater Mumbai and anr ... Respondents

Mr. Bholaprasad S. Shukla, for the Appellant.
Mrs. Madhuri More, for respondent corporation.
Mr. Vishal Thaker a/w Anjali Trivedi, i/by V. Thaker,
for respondent No.2.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 17th JANUARY, 2019.

P.C. :

1] Heard learned counsel for the appellant and respondents.

2] This Appeal takes an exception to the order dated 10th December, 2016, passed by the City Civil Court, Mumbai, thereby dismissing the Notice of Motion No.3084 of 2018, filed in L.C.Suit No.2330 of 2018.

3] The said Notice of Motion was taken up by the appellant to restrain respondent Municipal Corporation from taking any action of demolition of the suit property till his application for alternate

accommodation is decided.

4] It is submitted that as per direction given by the Division bench of this Court in W.P.5735 of 2006, opportunity was given to the appellant to make an application to the Municipal Corporation for grant of alternate accommodation within two weeks from the date of judgment. Accordingly the appellant has within two weeks made application for grant of alternate accommodation. The said application is yet not decided by the respondent corporation and despite that the Corporation has issued notice for taking action of demolition. Being aggrieved thereby the appellant has filed L.C. Suit and sought interim direction against respondents.

The trial Court has, however, dismissed the Notice of Motion and hence the instant appeal.

5] The perusal of the order by the Division Bench of this Court in W. P.5735 of 2006, goes to show that specific direction was given to the petitioner to vacate suit premises and hand over possession thereof to the respondent, within four months from the date on which order was uploaded. According to learned counsel for appellant, this period of four months was given so that the application of the appellant for alternate accommodation would be decided, in the meanwhile, and according to him, as his application for alternate accommodation is yet not decided, his possession in the suit

premises be protected.

6] However, it is apparent that there is no specific direction to that effect, in the order of the Division Bench. Conversely, a specific direction is given to the appellant to vacate the suit premises within four months and thereafter respondent corporation to remove the structure on Final Plot and hand over the vacant possession after demolishing the said structure.

7] In view thereof the trial Court has rightly rejected the relief of interim injunction by dismissing the Notice of Motion. The Appeal, being without merits stands dismissed.

8] At this stage, learned counsel for the appellant seeks continuation of the order of ad-interim stay granted by this Court when the appeal was filed. Learned counsel for respondent corporation strongly resist the same and in my considered opinion, in view of the order passed by the Division Bench, taking action of demolition and handing over possession, this prayer for extension of ad-interim stay cannot be granted. Therefore, it stands rejected.

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