

vks

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

**APPEAL FROM ORDER (ST) NO.36821 OF 2018
WITH
CIVIL APPLICATION(ST) NO.36823 OF 2018
IN
APPEAL FROM ORDER (ST) NO.36821 OF 2018**

Anisa Apartment Co-operative
Housing Soc. Ltd.

... Appellant

V/s.

Municipal Corporation of
Greater Mumbai and ors

... Respondents

Mr. Vasim A. Shaikh, for the Appellant.
Mrs. Madhuri More, for respondent

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 15th JANUARY, 2019.

P.C. :

1] Heard learned counsel for the appellant and respondent.

2] This appeal is directed against the order dated 16th November, 2018, passed by the City Civil Court, Mumbai, whereby it has refused to grant ad-interim relief in Draft Notice of Motion in suit No.2848 of 2018.

3] The case of the appellant is that the appellant society has constructed a cabin admeasuring 4.80 sq. meters, for security personnel and also had applied for regularization of the said

structure. Respondent Municipal Corporation has, however, rejected the said proposal and that too on the technical ground and has initiated action of demolition. Therefore, it is necessary to grant ad-interim relief; which is rejected by the trial Court.

4] However, as rightly observed passed by the Trial Court, once the proposal for regularization of the suit structure is rejected, the Court cannot protect the construction which is apparently illegal and unauthorized. Therefore, no fault can be found in the impugned order passed by the trial Court.

5] As regards the contention that the proposal for regularization was rejected on technical ground, the letter dated 15.6.2018, produced on record, goes to show that the proposal was rejected for non submission of no objection and for other requisite documents from the concerned ward as already the Notice under Section 354A of the Mumbai Municipal Corporation was issued by the Municipal Corporation. Therefore, the appellant's contention cannot be accepted that the proposal for regularization was rejected on technical grounds.

6] In view thereof, no case is made out for interference in the discretionary order passed by the trial Court of rejecting the ad-interim relief.

7] The appeal being without merits stands dismissed.

8] In view of dismissal of appeal, pending Civil Application therein becomes infructuous and the same is disposed off.

[DR.SHALINI PHANSALKAR-JOSHI, J.]