

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.100 OF 2017

Indu Sarthi Developers	...	Petitioner
versus		
The Municipal Corporation of Greater Mumbai and Ors.	...	Respondents

Mr. A.R.Shaikh, for Petitioner.

Mr. Ashwin Sakolkar with Ms. Vandana Mahadik, Ms. Rupali Adhate, for MCGM.

**CORAM: S.J. KATHAWALLA &
B.P.COLABAWALLA, JJ.**

DATE: 20th DECEMBER, 2019

P.C.:

1. Perused the order dated 5th December, 2019. The Corporation was not taking action against the impugned structure in view of the order dated 13th July, 2017 passed by the City Civil Court, Mumbai which was an ex-parte ad-interim order. The City Civil Court had thereafter, not heard the matter on merits and the injunction continued. In view thereof, on 5th December, 2019 we passed a detailed order, paragraphs 5 and 6 of which are reproduced hereunder :

“5. We have in most of the matters before us noted that , as soon as the Municipal Corporation issues a notice to any party to remove the unauthorized structure/s, he/she files an injunction suit in the City Civil Court, giving very short notice to the Corporation, moves and obtains an ad-interim injunction, not on merits but as a matter of course, since the

Advocate for the Corporation, who is served with the papers at the last minute is left with no alternative but to seek time to take instructions. Consequently, as in the instant case, this Court is unable to move further in the matter, since the Corporation repeatedly submits that despite the structure being unauthorized, it is unable to take any action because of the ad-interim order passed by the City Civil Court. This modus operandi cannot continue. A copy of this order shall be forwarded to the Principal Judge, City Civil and Sessions Court to ensure that ad-interim urgent orders passed in the aforesaid routine manner without going into the merits and without the Corporation getting enough time to take instructions in the matters, do not continue for an indefinite period but the matters pertaining to unauthorized constructions where such ex-parte urgent orders are passed should be taken up for final hearing and decided on merits at the earliest.

6. The learned Judge of the City Civil Court, Dindoshi to whom the above Notice of Motion taken out in L.C. Suit No. 1979 of 2017 is assigned, should hear the Notice of Motion within a period of two weeks from today and pass appropriate orders. Both the parties shall appear before the Principal Judge, City Civil Court, Dindoshi on 9th December, 2019 at 11.00 a.m., produce this order and seek necessary directions.”

2. Pursuant thereto, the City Civil Court had decided the Notice of Motion and has forwarded its order dated 13th December, 2019 to this Court. From the said order, it appears that the judgment was uploaded on 17th December, 2019. Time was granted to the Original Plaintiff to file an Appeal from Order upto 19th December,

2019. If there is no stay on the order granted by the High Court, the Corporation shall forthwith proceed to remove the offending structure.

3. The Writ Petition is accordingly disposed of.

4. All concerned to act on an ordinary copy of this order duly authenticated by the Private Secretary of this Court.

(B.P.COLABAWALLA, J.)

(S.J.KATHAWALLA, J.)