

Dond

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

**APPEAL FROM ORDER ST. NO.5295 OF 2018
WITH
CAA (ST) NO.5296 OF 2018**

Mr.Mohamed Ayub Gulam Rasul Prop.of
M/s Gulshan Dairy Firm

..Appellant

Vs

The Municipal Corporation of Greater Mumbai

..Respondents

Mr. Vishal Kanade i/b J.J. Shah for Appellant.
Ms. Madhuri More for Respondent.

**CORAM : A.S.GADKARI, J.
DATE : 13th February 2020.**

P.C.:

1] The Municipal Corporation had issued a Notice dated 8.8.2017 under section 351 of Mumbai Municipal Act alongwith Schedule of unauthorised construction mentioned therein. A photograph of the suit structure is also appended thereto.

2] The record indicates that, by a an Order dated 3.11.2017 this Court had granted liberty to the Court Commissioner for measuring the suit structure. Accordingly, the appellant had filed an application on which the Trial Court passed an Order dated 17.11.2017 directing the Court Commissioner to submit a report about the measurement and the mode of construction of the suit premises.

The Court Commissioner submitted his report dated 29.11.2017 in that behalf. In un-numbered para No.3 (Page No.52 of the appeal) therein, it is stated that, the suit structure admeasures 3.3 mtrs x 6.9 mtrs.

3] Prima facie it is apparent that, there is material variance in the measurement mentioned in the Schedule to the said Notice and in Court Commissioner's Report.

4] In view thereof, ad-interim relief granted by this Court by its Order dated 28th February 2018 in the present appeal shall remain in operation till the disposal of the L.C. Suit No.2752 of 2017 filed by the appellant.

5] Appeal is disposed off in the aforesaid terms.

6] In view of disposal of the appeal, Civil Application does not survive and is accordingly disposed off.

(A.S.GADKARI, J.)