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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL(STAMP) NO.30485 OF 2019
WITH
INTERIM APPLICATION NO.1 OF 2019

Firoz H. Khan

...Appellant /
...Applicant

V/s.

M.C.G.M. & Anr.

...Respondents

Mr.B.S. Shukla for the Appellant / Applicant.

Mrs.Sheetal Mane – Tadke for the M.C.G.M. - Respondent.

Mr.Mahendra Rodrigues, Junior Engineer, K/East Ward is present.

CORAM : R.D. DHANUKA, J.
DATE : 20TH JANUARY, 2020.

P.C. :-

1. Mr.Shukla, learned counsel appearing for the appellant invited my attention to a notice dated 12th September, 2009 issued by the Municipal Corporation under section 354-A of the Mumbai Municipal Corporation Act and a reply dated 12th September, 2009 given by his client to the learned Assistant Commissioner in response to the said notice. He submits that no hearing was rendered to the appellant though a reply was filed by his client to the notice issued under section 354-A of the Mumbai Municipal Corporation Act. He further submits that though the Municipal Corporation has not filed any written statement before the Trial Court, the Trial Court has dismissed the suit filed by his client.

2. Learned counsel for the Municipal Corporation on the other hand on instructions states that the Designated Officer, Incharge of this matter would render hearing to the appellant and would pass an appropriate order within four weeks from today. Statement is accepted.

3. The appellant would be at liberty to produce additional documents before the Designated Officer at the time of hearing. The Designated Officer shall consider the documents and the pleadings, if any, that would be produced by the appellant on its own merit and pass appropriate order within four weeks from today.

4. In view of the aforesaid order, the impugned decree passed by the Trial Court on 16th November, 2019 in L.C. Suit No.1885 of 2009 is set aside. L.C. Suit No.1885 of 2009 is disposed of in aforesaid terms.

5. If the order proposed to be passed by the Designated Officer is adverse against the appellant, the same shall not be implemented for a period of two weeks from the date of communication of the said order. The appellant is directed to appear before the Designated Officer, K/East Ward, on 27th January, 2020 at 3.00 p.m. The appellant is directed not to ask for any unnecessary adjournment before the Designated Officer and shall co-operate the learned Designated Officer to dispose of the proceedings

expeditiously as directed.

6. The First Appeal is disposed of in aforesaid terms. There shall be no order as to costs. In view of the aforesaid order, the *ad-interim* protection granted by the Trial Court on 16th November, 2019 and continued by this Court by an order dated 10th December, 2019 to continue till an order is passed by the Designated Officer and for a period of two weeks thereafter from the date of communication of the said order if the said order is adverse to the appellant. It is made clear that this Court has not expressed any views on the merits of the matter. All contentions of both the parties are kept open.

7. In view of disposal of the First Appeal, Interim Application No.1 of 2019 does not survive and is accordingly disposed of.

8. Parties as well as the Designated Officer to act on the authenticated copy of this order.

(R.D. DHANUKA, J.)