

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****APPEAL FROM ORDER NO. 693 OF 2019****WITH****I.A. (STAMP) NO. 95105 OF 2020****IN****APPEAL FROM ORDER NO. 693 OF 2019****WITH****C.A.A. NO. 875 OF 2019****IN****APPEAL FROM ORDER NO. 693 OF 2019**

Mrs. Lourdes Zizello Mascarenhas

.....Appellant/
Applicant.

Vs.

Brihanmumbai Municipal Corporation

.....Respondent.

Mr. Prashant Pandey a/w Mr. Tushar Halwai for the Appellant/Applicant.
Smt. Madhuri More for the Respondent-BMC.**CORAM : A. S. GADKARI, J.****DATE : 15th JULY, 2021.****(Through Video Conferencing)****P.C.:-**

The present Appeal is directed against the interlocutory Order dated 5th March, 2016 thereby, the Trial Court has refused to grant ad-interim relief in favour of the Appellant in Draft Notice of Motion in L.C. Suit No.524 of 2016.

2 The Appellant has filed L.C. Suit No.524 of 2016, impugning notices dated 11th September, 2015 and 18th February, 2016 issued by the Respondent-Corporation under Section 354 read with Section 489 of the Mumbai Municipal Corporation Act.

3 The record indicates that, by an Order dated 29th March, 2016, this Court granted ad-interim relief in favour of the Appellant. Paragraph No.3 of the said Order dated 29th March, 2015 reads as under-

“3 *Till the next date, the Respondent Corporation will not take any action of demolition. It is further clarified that occupation of the Appellant is entirely at the risk of the Appellant.*”

The said relief is extended from time to time till today.

4 Mr. Pandey, learned counsel appearing for the Appellant, on instructions submitted that, the said Draft Notice of Motion has now been numbered and is ready for hearing.

5 In view thereof, it would be appropriate to direct the learned Judge, City Civil Court, Dindoshi, Goregaon, Mumbai seized of the said Draft Notice of Motion in L.C. Suit No.524 of 2016 to hear the said Notice of Motion itself and to make an endeavour to dispose it off on or before 31st December, 2021.

6 In view of the above, the interim relief granted by Order dated 29th March, 2016, is further clarified as under:-

In the interregnum and during the pendency of the said Notice of Motion, in case, any untoward or unfortunate incident or calamity occurs in respect to the Suit building, the Appellant shall be held solely responsible for the cost and consequences thereof, including criminal liability which might arise due to loss to the life or limb and damage caused even to the passersby or to the property of adjoining premises and/or its residents to the suit building.

Interim relief granted by Order dated 29th March, 2016 along with aforesaid clarification will remain in force till the disposal of the said Notice of Motion.

7 At this stage, Mr. Pandey, learned Advocate appearing for the Appellant submitted that, in furtherance of Order dated 10th July, 2020 passed in LD-VC-SJ-AS-IA-1-2020 in Appeal From Order No.693 of 2016, and particularly in paragraph No.4 thereof, the Appellant has filed Undertaking-Cum-Indemnity Bond along with List of Additional Documents. That, the said Undertaking-Cum-Indemnity Bond dated 27th July, 2020 is at page Nos. 159 to 161 of the List of Additional Documents. He further submitted that, the Appellant has complied with the Order dated

10th July, 2020 passed by this Court.

8 Appeal is disposed off in the aforesaid terms.

9 In view of disposal of the Appeal from Order itself, I.A. (Stamp)
No.95105 of 2020 and C.A.A. No.875 of 2019 in Appeal From Order
No.693 of 2019 do not survive and are accordingly disposed off.

(A.S. GADKARI, J.)