

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****APPEAL FROM ORDER NO. 191 OF 2021
WITH
INTERIM APPLICATION NO. 1880 OF 2021**

Mohammed Abulaish Shaikh

Alias Firoz Shaikh

... Appellant

V/s.

Designated Officer-1,

Assistant Engineer (Building and Factories)

... Respondent

Mr.Joel Carlos i/b. Mr.Akshay Kapadia for Appellant.

Mrs.Madhuri More for Respondent.

CORAM : A.S. GADKARI, J.

DATE : 23rd August 2021.

PC. :

1. By the present Appeal filed under Order 43 of Civil Procedure Code, the Appellant has challenged the Order dated 5th August 2021 passed in Notice of Motion No. 1664 of 2021 in L.C. Suit (St.) No. 5796 of 2021, thereby refusing to grant the ad-interim relief in his favour.

2. Heard Mr.Carlos, learned counsel for the Appellant and Mrs. More, learned counsel for the Respondent-Corporation. Perused record.

3. The record indicates that, the suit structure was demolished by the Competent Authority of Corporation on two earlier occasions, i.e. on 9th September 2020 an 11th September 2020. Despite the said fact, it is the

contention of the Appellant that, the suit structure is in existence and what was demolished by the Corporation is some different structure. It is a matter of trial and the Appellant will have to prove the said fact by leading cogent evidence in that behalf.

4. Perusal of record further indicates that, while erecting the alleged suit structure, no permission from any Competent Authority has been obtained by the Appellant. If the contention of the learned counsel for the Appellant is to be accepted that, the suit structure falls in a slum area, then it appears that, it is not a censused structure and therefore not liable for any protection. That, the Appellant in utter disregard to the law of the land is bent upon to construct the structure illegally for which the Corporation is seeking demolition by following due process of law.

5. The Trial Court while passing the impugned Order dated 5th August 2021 has taken into consideration various necessary aspects of the matter. This Court finds that, there is no error either in law or on facts committed by the Trial Court, while passing the impugned Order.

6. There are no merits in the Appeal. Appeal is accordingly dismissed.

7. In view of dismissal of Appeal, Interim Application No.1880 of 2021 does not survive and is accordingly disposed off.